Tab 1	**SB 162** by **Perry**; Public Records

733682	D	S	RCS	RC, Perry	Delete everything after	02/19 12:45 PM

Tab 2	**SB 1080** by **Perry (CO-INTRODUCERS) Baxley**; (Similar to H 00743) Nonopioid Alternatives

Tab 3	**SB 7034** by **CJ**; (Identical to H 07013) OGSR/Residential Facilities Serving Victims of Sexual Exploitation

Tab 4	**CS/SB 364** by **CA, Rader (CO-INTRODUCERS) Torres, Pizzo**; (Similar to CS/CS/CS/H 00039) Independent Living Task Force

663092	A	S	RCS	RC, Rader	Delete L.23 - 31:	02/19 12:56 PM
406430	A	S	RCS	RC, Rader	btw L.81 - 82:	02/19 12:56 PM
591004	A	S	RCS	RC, Rader	Delete L.109 - 110:	02/19 12:56 PM

Tab 5	**SB 388** by **Hooper**; (Identical to H 06027) Citrus/Hernando Waterways Restoration Council

Tab 6	**CS/CS/SB 1332** by **IS, CA, Hooper**; (Similar to CS/CS/1ST ENG/H 00133) Towing and Immobilizing Vehicles and Vessels

Tab 7	**CS/CS/SB 538** by **CA, IS, Diaz (CO-INTRODUCERS) Book, Pizzo, Perry**; (Identical to CS/H 00865) Emergency Reporting

Tab 8	**SB 1084** by **Diaz (CO-INTRODUCERS) Montford**; (Similar to CS/CS/CS/H 00209) Emotional Support Animals

Tab 9	**CS/SB 1188** by **GO, Albritton**; (Similar to CS/H 01409) Public Records/Records of Insurers/Department of Financial Services

535922	A	S	RCS	RC, Albritton	Delete L.189:	02/19 01:10 PM

Tab 10	**SB 1256** by **Albritton**; (Identical to H 06055) Telegraph Companies

Tab 11	**CS/SB 1590** by **JU, Powell**; (Compare to H 01125) Juror Sanctions

Tab 12	**CS/SB 7010** by **GO, MS**; (Similar to H 07027) OGSR/Servicemembers and the Spouses and Dependents of Servicemembers

386900	D	S		RC, Wright	Delete everything after	02/19 07:51 AM

Tab 13	**SB 7014** by **BI**; (Identical to H 07003) OGSR/Payment Instrument Transaction Information/Office of Financial Regulation

Tab 14	**CS/SB 344** by **JU, Bradley**; (Similar to CS/H 00211) Courts

Tab 15	**CS/SB 1490** by **GO, Bradley (CO-INTRODUCERS) Broxson, Farmer, Bracy, Rader**; (Similar to CS/H 01435) Public Officers and Employees

Tab 16	**CS/CS/SB 1286** by **JU, CJ, Simmons**; (Similar to CS/H 00745) Contraband in Specified Facilities

Tab 17	**SB 1362** by **Rodriguez**; (Compare to H 06033) Rental Agreements

Tab 18	**CS/CS/SB 1564** by **JU, BI, Stargel**; (Similar to H 01189) Genetic Information for Insurance Purposes

Tab 19	**CS/CS/SB 1794** by **JU, EE, Hutson**; (Compare to CS/H 07037) Constitutional Amendments				
763622	A	S	RC, Rodriguez	Before L.66:	02/18 09:54 AM
258150	A	S	RC, Hutson	Delete L.83 - 85:	02/18 01:20 PM
640730	A	S	RC, Hutson	Delete L.143 - 144:	02/18 01:20 PM
641890	A	S	RC, Hutson	Delete L.248 - 538:	02/18 01:21 PM

Tab 20	**SB 7000** by **CF**; Reporting Abuse, Abandonment, and Neglect

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

RULES
Senator Benacquisto, Chair
Senator Gibson, Vice Chair

MEETING DATE: Wednesday, February 19, 2020
TIME: 10:00 a.m.—12:00 noon
PLACE: *Toni Jennings Committee Room,* 110 Senate Building

MEMBERS: Senator Benacquisto, Chair; Senator Gibson, Vice Chair; Senators Book, Bradley, Brandes, Braynon, Farmer, Flores, Hutson, Lee, Montford, Passidomo, Rodriguez, Simmons, Simpson, Stargel, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 162** Perry	Public Records; Requiring a court to assess the reasonable costs of enforcement against an agency upon the court's determination in an action for a declaratory judgment that certain records are not subject to a public records exemption, etc. GO 10/14/2019 Favorable JU 11/05/2019 Favorable RC 02/19/2020 Fav/CS	Fav/CS Yeas 17 Nays 0
2	**SB 1080** Perry (Similar H 743)	Nonopioid Alternatives; Revising exceptions to certain controlled substance prescribing requirements; clarifying that a certain patient or patient representative must be informed of specified information, have specified information discussed with him or her, and be provided with an electronic or printed copy of a specified educational pamphlet, etc. HP 01/14/2020 Favorable JU 01/28/2020 Favorable RC 02/19/2020 Favorable	Favorable Yeas 17 Nays 0
3	**SB 7034** Criminal Justice (Identical H 7013)	OGSR/Residential Facilities Serving Victims of Sexual Exploitation; Abrogating the scheduled repeal of provisions relating to location information of specified places that serve child victims of commercial sexual exploitation; abrogating the scheduled repeal of provisions relating to location information of residential facilities that offer services for certain victims of human trafficking, etc. GO 01/27/2020 Favorable RC 02/19/2020 Favorable	Favorable Yeas 17 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**CS/SB 364** Community Affairs / Rader (Similar CS/CS/CS/H 39, S 340)	Independent Living Task Force; Establishing the Independent Living Task Force within the Florida Housing Finance Corporation; defining the term "disability"; requiring the task force to submit a report to the Governor and the Legislature by a specified date, etc. CF 11/05/2019 Favorable CA 12/09/2019 Fav/CS RC 02/12/2020 Temporarily Postponed RC 02/19/2020 Fav/CS	Fav/CS Yeas 16 Nays 0
5	**SB 388** Hooper (Identical H 6027, Compare CS/H 7039, CS/S 1636)	Citrus/Hernando Waterways Restoration Council; Abolishing the Citrus/Hernando Waterways Restoration Council, etc. EN 11/13/2019 Favorable CA 01/21/2020 Favorable RC 02/19/2020 Favorable	Favorable Yeas 15 Nays 0
6	**CS/CS/SB 1332** Infrastructure and Security / Community Affairs / Hooper (Similar CS/CS/H 133)	Towing and Immobilizing Vehicles and Vessels; Authorizing local governments to enact rates to tow or immobilize vessels on private property and to remove and store vessels under specified circumstances; prohibiting counties from enacting certain ordinances or rules that impose fees or charges on authorized wrecker operators or towing businesses; authorizing certain persons to place liens on vehicles or vessels to recover specified fees or charges; revising requirements regarding notices and signs concerning the towing or removal of vehicles or vessels, etc. CA 01/21/2020 Fav/CS IS 02/10/2020 Fav/CS RC 02/19/2020 Favorable	Favorable Yeas 15 Nays 0
7	**CS/CS/SB 538** Community Affairs / Infrastructure and Security / Diaz (Identical CS/H 865)	Emergency Reporting; Requiring the State Watch Office within the Division of Emergency Management to create a list of reportable incidents; requiring a political subdivision to report incidents contained on the list to the office; authorizing the office to establish guidelines a political subdivision must follow to report an incident, etc. IS 01/21/2020 Fav/CS CA 02/10/2020 Fav/CS RC 02/19/2020 Favorable	Favorable Yeas 16 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	**SB 1084** Diaz (Similar CS/CS/CS/H 209, Compare H 49)	Emotional Support Animals; Prohibiting discrimination in the rental of a dwelling to a person with a disability or a disability-related need who has an emotional support animal; prohibiting a landlord from requiring such person to pay extra compensation for such animal; prohibiting the falsification of written documentation or other misrepresentation regarding the use of an emotional support animal; specifying that a person with a disability or a disability-related need is liable for certain damage done by her or his emotional support animal, etc. AG 01/14/2020 Favorable IT 02/03/2020 Not Considered IT 02/10/2020 Favorable RC 02/19/2020 Favorable	Favorable Yeas 16 Nays 0
9	**CS/SB 1188** Governmental Oversight and Accountability / Albritton (Similar CS/H 1409)	Public Records/Records of Insurers/Department of Financial Services; Providing an exemption from public records requirements for consumer personal financial and health information, certain underwriting files, insurer personnel and payroll records, consumer claim files, certain reports and documents relating to insurer own-risk, solvency assessments, corporate governance annual disclosures, and certain information received from the National Association of Insurance Commissioners or governments in records made or received by the Department of Financial Services acting as receiver as to an insurer; providing for future legislative review and repeal of the exemptions; providing statements of public necessity, etc. BI 01/15/2020 Favorable GO 02/03/2020 Fav/CS RC 02/19/2020 Fav/CS	Fav/CS Yeas 17 Nays 0
10	**SB 1256** Albritton (Identical H 6055)	Telegraph Companies; Repealing provisions relating to the regulation of telegraph companies and telegrams, etc. IT 01/27/2020 Favorable JU 02/04/2020 Favorable RC 02/19/2020 Favorable	Favorable Yeas 17 Nays 0
11	**CS/SB 1590** Judiciary / Powell (Compare H 1125)	Juror Sanctions; Revising available sanctions for any person who fails to attend court as a juror without any sufficient excuse; restricting a court from imposing a term of imprisonment on any person who fails to attend as a juror without any sufficient excuse and is found in contempt of court unless the person is able to obtain legal representation, etc. JU 02/04/2020 Fav/CS RC 02/19/2020 Favorable	Favorable Yeas 17 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	**CS/SB 7010** Governmental Oversight and Accountability / Military and Veterans Affairs and Space (Similar H 7027)	OGSR/Servicemembers and the Spouses and Dependents of Servicemembers; Amending a provision which provides a public records exemption for the identification and location information of servicemembers and the spouses and dependents of servicemembers; expanding the exemption by removing the requirement that a servicemember submit a written statement that reasonable efforts have been made to protect the information in order to claim the exemption; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. GO 01/13/2020 Fav/CS RC 01/29/2020 Temporarily Postponed RC 02/12/2020 Temporarily Postponed RC 02/19/2020 Temporarily Postponed	Temporarily Postponed
13	**SB 7014** Banking and Insurance (Identical H 7003)	OGSR/Payment Instrument Transaction Information/Office of Financial Regulation; Amending a provision relating to an exemption from public records requirements for certain payment instrument transaction information held by the Office of Financial Regulation; removing the scheduled repeal of the exemption, etc. GO 01/21/2020 Favorable RC 02/19/2020 Favorable	Favorable Yeas 17 Nays 0
14	**CS/SB 344** Judiciary / Bradley (Similar CS/H 211)	Courts; Specifying that certain exemptions from court-related fees and charges apply to certain entities; requiring the court to waive any court costs or filing fees for certain proceedings involving public guardians; providing that certain examinations may be performed and reports prepared by a physician assistant or an advanced practice registered nurse under certain circumstances, etc. JU 11/05/2019 Fav/CS CF 12/10/2019 Favorable RC 02/19/2020 Favorable	Favorable Yeas 17 Nays 0
15	**CS/SB 1490** Governmental Oversight and Accountability / Bradley (Similar CS/H 1435)	Public Officers and Employees; Authorizing the giving, solicitation, and acceptance of gifts or compensation to be used toward costs incurred due to a serious bodily injury or the diagnosis of a serious disease or illness of specified reporting individuals, procurement employees, or a child thereof; revising provisions regarding prohibited lobbying expenditures in the legislative and executive branches to conform to changes made by the act, etc. EE 01/21/2020 Favorable GO 02/03/2020 Fav/CS RC 02/19/2020 Favorable	Favorable Yeas 16 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
16	**CS/CS/SB 1286** Judiciary / Criminal Justice / Simmons (Similar CS/H 745)	Contraband in Specified Facilities; Prohibiting the introduction of certain cannabis related substances, cellular telephones and other portable communication devices, and vapor-generating electronic devices inside specified facilities of the Department of Children and Families or of the Agency for Persons with Disabilities; providing criminal penalties; prohibiting the introduction of certain cannabis related substances and vapor-generating electronic devices inside a state correctional institution, etc. CJ 01/28/2020 Fav/CS JU 02/11/2020 Fav/CS RC 02/19/2020 Favorable	Favorable Yeas 17 Nays 0
17	**SB 1362** Rodriguez (Compare H 6033)	Rental Agreements; Repealing a provision relating to the termination of a rental agreement upon foreclosure; creating the "Protecting Tenants at Foreclosure Act"; providing for the assumption of interest in certain foreclosures on dwellings or residential real property; requiring the director of the Division of Consumer Services of the Department of Agriculture and Consumer Services to notify the Division of Law Revision of the repeal of the Protecting Tenants at Foreclosure Act of 2009 within a specified timeframe, etc. JU 01/21/2020 Favorable CM 02/11/2020 Favorable RC 02/19/2020 Favorable	Favorable Yeas 16 Nays 1
18	**CS/CS/SB 1564** Judiciary / Banking and Insurance / Stargel (Similar H 1189)	Genetic Information for Insurance Purposes; Prohibiting life insurers and long-term care insurers from canceling, limiting, or denying coverage or establishing differentials in premium rates based on genetic information under certain circumstances; prohibiting such insurers from taking certain actions relating to genetic information for any insurance purpose, etc. BI 01/28/2020 Fav/CS JU 02/11/2020 Fav/CS RC 02/19/2020 Favorable	Favorable Yeas 16 Nays 1

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
19	**CS/CS/SB 1794** Judiciary / Ethics and Elections / Hutson (Compare CS/H 7037)	Constitutional Amendments; Requiring the Secretary of State to submit an initiative petition to the Legislature when a certain amount of signatures are obtained and verified; providing that a citizen may challenge in circuit court a petition circulator's registration with the Secretary of State; authorizing the Division of Elections or a supervisor of elections to provide petition forms in a certain electronic format; requiring that ballots containing constitutional amendments include certain disclosures and statements, in a specified order, etc. EE 01/27/2020 Fav/CS JU 02/11/2020 Fav/CS RC 02/19/2020 Temporarily Postponed	Temporarily Postponed
20	**SB 7000** Children, Families, and Elder Affairs	Reporting Abuse, Abandonment, and Neglect; Relocating existing provisions relating to the central abuse hotline of the Department of Children and Families; revising when a person is required to report to the central abuse hotline; providing penalties for the failure to report known or suspected child abuse, abandonment, or neglect; providing responsibilities for child protective investigators relating to animal abuse and neglect; requiring the Education Practices Commission to suspend the educator certificate of certain personnel and administrators for failing to report known or suspected child abuse, etc. ED 02/03/2020 Favorable RC 02/19/2020 Favorable	Favorable Yeas 16 Nays 0
	Other Related Meeting Documents		

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 162
INTRODUCER:	Rules Committee and Senator Perry
SUBJECT:	Public Records
DATE:	February 19, 2020
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	McVaney	GO	**Favorable**
2.	Elsesser	Cibula	JU	**Favorable**
3.	Hackett	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 162 amends s. 119.07, F.S., regarding public records. In simplest terms, the bill prohibits an agency from responding to a request to inspect or copy a public record by filing a civil action against the individual or entity making the request. This effectively prohibits an agency from initiating a declaratory judgment seeking a judicial interpretation on the application of a public records exemption.

The fiscal impact of the bill on state and local governments and their contractors is indeterminate. However, to the extent an agency is no longer permitted to use the declaratory judgment action as a tool to interpret the laws pertaining to public records exemption, an agency may incur greater litigation costs associated with cases challenging an agency's denial of access to records (presumably based on the confidential and exempt or exempt status of the records).

The bill takes effect July 1, 2020.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[1] This applies to the official business

[1] FLA. CONST., art. I, s. 24(a).

of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[2]

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.[3] The Public Records Act states that

> [i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.[4]

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[5] The Florida Supreme Court has interpreted public records as being "any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."[6]

Section 119.011(2), F.S., broadly defines "agency" to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person's right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[7] A violation of the Public Records Act may result in civil or criminal liability.[8]

Making a Public Records Request

Section 119.07, F.S., sets out an orderly process for a citizen to request a public record:

1. The requestor contacts the agency in writing or orally to request to inspect or copy certain records.

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[2] *Id*.
[3] Public records laws are found throughout the Florida Statutes.
[4] Section 119.01(1), F.S.
[5] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[6] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc*., 379 So. 2d 633, 640 (Fla. 1980).
[7] Section 119.07(1)(a), F.S.
[8] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

2. The custodian or designee must acknowledge the request and respond to it in good faith.
3. The agency may then provide the records subject to exemptions and confidentiality, or deny the request and state the basis for its denial.

In cases where the agency is uncertain whether the requested documents are subject to a public records exemption, the agency may:

- Refuse to release the requested documents and risk having suit brought against the agency by any number of plaintiffs for the release of the documents and the award of statutory attorney's fees;[9]
- Release the requested documents, assuming any risk of having unlawfully released confidential documents;
- Seek voluntary mediation of the dispute using the Attorney General's public records mediation program pursuant to s. 16.60, F.S.;[10]
- Seek an Attorney General Opinion; or
- Bring suit in its local court seeking a declaratory judgment on the uncertainty.

If a request is denied, the requestor has the option to work with the agency in an effort to refine or alter its request so that the agency might disclose the information if the request is clarified, presented differently, or modified. The requestor may also:

- File a civil lawsuit alleging that the agency's action is a violation of public records law;
- File a complaint with the local state attorney; or
- Seek voluntary mediation of the dispute using the Attorney General's public records mediation program pursuant to s. 16.60, F.S.[11]

Criminal and Noncriminal Penalties

If a person willfully and knowingly violates public records laws either by failing to release unprotected information or by releasing exempt or confidential information, that employee may be subject to criminal prosecution for a first degree misdemeanor, which carries a sentence of imprisonment up to one year and a fine of up to $1000.[12] Additionally, knowing and willful failure to protect the public records of victims of crimes or accidents under s. 119.105, F.S., constitutes a third degree felony, punishable by a sentence of imprisonment up to five years and a fine of up to $5,000.[13]

Reasonable attorney's fees will be assessed against an agency found to have violated public records law.[14]

[9] *See Bd. Of Trustees, Jacksonville Police & Fire Pension Fund v. Lee*, 189 So. 3d 120 (Fla. 2016) (a prevailing party is entitled to statutory attorney's fees under the Public Records Act when the trial court finds that the public agency violated a provision of the Public records Act in failing to permit a public record to be inspected or copied).
[10] The Attorney General's Office mediates approximately 100 such cases each year, which is a free and non-binding process.
[11] The Attorney General's Office mediates approximately 100 such cases each year, which is a free and non-binding process.
[12] Section 119.10(2)(a), F.S.
[13] Section 119.10(2)(b), F.S.
[14] Section 286.011(4), F.S.

Florida Attorney General Advisory Legal Opinions

The Attorney General must respond to requests for opinions from the Governor, members of the Cabinet, the head of an executive branch department, or certain members of the Florida Legislature. They are authorized, but not required, to respond to requests for opinions from members of the Legislature, other state officers, and officers of a county, municipality, other unit of local government, or political subdivision.[15] Private companies contracting with local governments may be subject to public records laws but may not request Attorney General Opinions.

In order to request an Attorney General Opinion, attorneys for the public entity requesting an opinion must produce a legal memorandum to supply with their request. In 2018, the Attorney General issued six formal opinions.[16]

Florida Attorney General Open Government Mediation

Section 16.60, F.S., creates the public records mediation program within the Office of the Attorney General. It tasks that office with employing mediators to mediate disputes involving access to public records.

The open government mediation program is voluntary. Both sides to a dispute must agree to consider mediation if the program is to be utilized. The process is nonbinding, and decision-making authority remains with the parties.[17]

Declaratory Judgments

When an agency is uncertain whether a document is a record that must be disclosed to the public or is otherwise protected from disclosure, the agency may seek guidance from a court by filing a complaint against the requestor for declaratory judgment.[18] When such an action is filed, the court is required to set an "immediate hearing."[19] Declaratory judgment actions are used to resolve legal uncertainties for the parties. A declaratory judgment is a binding decision by which a court establishes the rights of the parties, having "the full force and effect of a final judgment."[20]

Section 86.081, F.S., provides that the court may award costs as are equitable. Generally, each party bears its own costs and attorney fees. However, if such a civil action against an agency is required to enforce the public records law, and the requestor gave 5 days' notice before filing the civil action, the court is required to award the costs of enforcement, including reasonable attorney's fees, against the agency, if the court finds that the agency "unlawfully refused" to

[15] Section 16.01(3), F.S.
[16] The Attorney General's Office filed 6 formal opinions in 2018, 8 in 2017, 18 in 2016, 14 in 2015, and 13 in 2014, http://myfloridalegal.com/ago.nsf/Opinions.
[17] Section 16.60, F.S.
[18] See *Butler v. City of Hallandale Beach*, 68 So. 3d 278, 279 (Fla. 4th DCA 2011).
[19] Section 119.11, F.S.
[20] Section 86.011, F.S.

release the records.[21] If a court determines that the requestor made their request or filed suit for an improper purpose (e.g., harassment), the court awards attorney fees to the agency.[22]

Because attorney fees are granted to a prevailing requestor, it is sometimes prudent for an agency or local government to bring suit immediately for clarification of the public records dispute in order to reduce fees at stake. Additionally, an agency facing harassing or otherwise improper requests has the option to bring suit to seek a determination that it does not need to respond to such requests.

III. Effect of Proposed Changes:

Section 1 amends s. 119.07, F.S. to prohibit an agency, including most state and local government entities and their contractors, from responding to a request to inspect or copy a public record by filing a civil action against the individual or entity making the request.

The bill prohibits any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government from initiating any type of civil legal action, including a declaratory judgment, against a person or entity who has made a public records request. If the option to use a declaratory judgment action is not available to an agency in instances where the duty to produce or protect records is not clear, an agency may face additional lawsuits (and associated costs) for refusing to provide access (even if the agency action is ultimately upheld as valid) or for producing records that should have been protected from public disclosure.

Section 2 provides that the bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, reduce counties' or municipalities'' ability to raise revenue, or reduce the percentage of state ta shares with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

[21] Section 119.12, F.S.
[22] Section 119.12(3), F.S.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have a positive impact on the private sector because individuals and entities that request public records will incur legal costs and fees associated with being sued by an agency.

C. Government Sector Impact:

No agency bill analysis has been reported at this time projecting how this bill may affect an agency. However, removing an agency's ability to request a declaratory judgment and avoid sanctions or further lawsuits may result in increased litigation and associated costs.

VI. Technical Deficiencies:

The bill amends s. 119.07(1), F.S., which sets out an agency's statutory duties to maintain public records and how to respond to requests to inspect and copy such records. Generally, public records exemptions exempt the records from the provisions of s. 119.07(1), F.S. If the language of this bill is enacted as a provision of s. 119.07(1), F.S., public records exemptions that cite to s. 119.07(1), F.S., will not be affected by this bill. If the intent is to apply this prohibition on litigation to current public records that cite to s. 119.071(1), F.S., the Legislature should change the language to create a new subsection of s. 119.07, F.S., rather than adding the language to s. 119.07(1), F.S.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 119.07.

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 Rules on February 19, 2020:
The CS prohibits agencies from bringing suit against public records requestors for declaratory judgment, as opposed to allowing the practice but shifting the costs of litigation to the agency.

B. Amendments:

None.

733682

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/19/2020	.	
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	.	
	.	

The Committee on Rules (Perry) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (j) is added to subsection (1) of section 119.07, Florida Statutes, to read:

119.07 Inspection and copying of records; photographing public records; fees; exemptions.—

(1)(j) After receiving a request to inspect or copy a record, an agency may not respond to that request by filing an action for declaratory relief against the requester to determine

733682

the status of those records as exempt or confidential from this chapter.

Section 2. This act shall take effect July 1, 2020.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to public records; amending s. 119.07, F.S.; prohibiting an agency that receives a request to inspect or copy a record from responding to such request by filing an action for declaratory relief against the requester; providing an effective date.

By Senator Perry

8-00230-20 2020162__

A bill to be entitled

An act relating to public records; amending s. 119.07, F.S.; requiring a court to assess the reasonable costs of enforcement against an agency upon the court's determination in an action for a declaratory judgment that certain records are not subject to a public records exemption; providing an effective date.

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

Section 1. Subsection (9) is added to section 119.07, Florida Statutes, to read:

119.07 Inspection and copying of records; photographing public records; fees; exemptions.—

(9) If an agency files an action for declaratory judgment for a declaration that certain public records are exempt, or confidential and exempt, from subsection (1) and s. 24(a), Art. I of the State Constitution, and the court determines that the records are either not exempt or not confidential and exempt, the court must assess the reasonable costs of enforcement, including reasonable attorney fees, against the responsible agency for the benefit of the named respondent.

Section 2. This act shall take effect July 1, 2020.

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: November 7, 2019

I respectfully request that **Senate Bill #162**, relating to Public Records, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

W. Keith Perry

Senator Keith Perry
Florida Senate, District 8

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-19-20
Meeting Date

162
Bill Number (if applicable)

733682
Amendment Barcode (if applicable)

Topic PUBLIC RECORDS

Name LAURA YOUMANS

Job Title LEGISLATIVE COUNSEL

Address 100 S. MONROE ST
Street

TAL FL 32301
City *State* *Zip*

Phone 294-1837

Email LYOUMANS@FLCOUNTIES.COM

Speaking: ☐ For ☑ Against ☐ Information

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

Representing FLORIDA ASSOCIATION OF COUNTIES

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-19-20
Meeting Date

162
Bill Number (if applicable)

Topic PUBLIC RECORDS

Amendment Barcode (if applicable)

Name LAURA YOUMANS

Job Title LEGISLATIVE COUNSEL

Address 100 S. MONROE
Street

TAL FL 32301
City *State* *Zip*

Phone

Email

Speaking: ☐ For ☐ Against ☑ Information

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

Representing FLORIDA ASSOCIATION OF COUNTIES

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

1105

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/19/2020
Meeting Date

SB 162
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Public Records

Name Starla Brown

Job Title Deputy State Director

Address _____ Phone _____

Street

Delray Beach Email _____

City *State* *Zip*

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

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

Representing Americans for Prosperity

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

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

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 1080
INTRODUCER:	Senators Perry and Baxley
SUBJECT:	Nonopioid Alternatives
DATE:	February 17, 2020
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Brown	HP	**Favorable**
2.	Stallard	Cibula	JU	**Favorable**
3.	Looke	Phelps	RC	**Favorable**

I. Summary:

SB 1080 amends the requirement that a health care practitioner advise a patient of nonopioid alternatives before providing care that uses opioid anesthesia or prescribing, ordering, dispensing, or administering an opioid drug.

More particularly, the bill amends this requirement by:

- Authorizing a health care practitioner to choose to advise the patient *or his or her representative*;
- Providing that a health care practitioner is not required to discuss nonopioid alternatives when treating a patient in a hospital critical care unit or an emergency department, or when treating a patient receiving hospice services; and
- No longer applying it to "dispensing" or "administering" of an opioid. For example, a nurse in a critical care unit does not need to advise a patient of nonopioid alternatives each time he or she gives the patient a dose of a prescribed opioid.

Both the bill and current law apply only to those opioid drugs that are listed as Schedule II controlled substances in s. 893.03, F.S., or 21 U.S.C. s. 812, including fentanyl, oxycodone, hydrocodone, codeine, and morphine.

II. Present Situation:

History of the Opioid Crisis in Florida

According to the National Institute on Drug Abuse:[1]

[1] National Institute on Drug Abuse, *Opioid Overdose Crisis* (Rev. Jan. 2019), https://www.drugabuse.gov/drugs-abuse/opioids/opioid-overdose-crisis (last visited Jan. 23, 2020).

- "In the late 1990s, pharmaceutical companies reassured the medical community that patients would not become addicted to prescription opioid pain relievers, and health care providers began to prescribe them at greater rates"; and
- "This subsequently led to widespread diversion and misuse of these medications before it became clear that these medications could indeed be highly addictive."

Between the early 2000s and the early 2010s, Florida was infamous as the "pill mill capital" of the country. At the peak of the pill mill crisis, doctors in Florida bought 89 percent of all the oxycodone sold in the county.[2]

Between 2009 and 2011, the Legislature enacted a series of reforms to combat prescription drug abuse. These reforms included strict regulation of pain management clinics; creating the Prescription Drug Monitoring Program (PDMP); and stricter regulation on selling, distributing, and dispensing controlled substances.[3] "In 2016, the opioid prescription rate was 75 per 100 persons in Florida. This rate was down from a high of 83 per 100."[4]

As reported by the Florida Attorney General's Opioid Working Group,

> Drug overdose is now the leading cause of non-injury related death in the United States. Since 2000, drug overdose death rates increased by 137 percent, including a 200 percent increase in the rate of overdose deaths involving opioids. In 2015, over 52,000 deaths in the U.S. were attributed to drug poisoning, and over 33,000 (63 percent) involved an opioid. In 2015, 3,535 deaths occurred in Florida where at least one drug was identified as the cause of death. More specifically, 2,535 deaths were caused by at least one opioid in 2015. Stated differently, seven lives per day were lost to opioids in Florida in 2015. Overall the state had a rate of opioid-caused deaths of 13 per 100,000. The three counties with the highest opioid death rate were Manatee County (37 per 100,000), Dixie County (30 per 100,000), and Palm Beach County (22 per 100,000).[5]

Early in 2017, the Center for Disease Control (CDC) declared the opioid crisis an epidemic.[6] Shortly thereafter, on May 3, 2017, Governor Rick Scott signed Executive Order 17-146 declaring the opioid epidemic a public health emergency in Florida.[7]

House Bill 21 (2018)

In 2018, the Florida Legislature passed HB 21 (ch. 2018-13, L.O.F.) to combat the opioid crisis. HB 21:

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[2] Lizette Alvarez, *Florida Shutting 'Pill Mill' Clinics*, The New York Times (Aug. 31, 2011), *available at* http://www.nytimes.com/2011/09/01/us/01drugs.html.
[3] *See* chs. 2009-198, 2010-211, and 2011-141, Laws of Fla.
[4] Attorney General's Opioid Working Group, *Florida's Opioid Epidemic: Recommendations and Best Practices*, 7 (March 1, 2019), *available at* https://myfloridalegal.com/webfiles.nsf/WF/TDGT-B9UTV9/$file/AG+Opioid+Working+Group+Report+Final+2-28-2019.pdf,.
[5] *Id.*
[6] *See* Exec. Order No. 17-146, *available at* https://www.flgov.com/wp-content/uploads/2017/05/17146.pdf.
[7] *Id.*

- Required additional training for practitioners on the safe and effective prescribing of controlled substances;
- Restricted the length of prescriptions for Schedule II opioid medications to three days or up to seven days if medically necessary;
- Reworked the PDMP statute to require that prescribing practitioners check the PDMP prior to prescribing a controlled substance and to allow the integration of PDMP data with electronic health records and the sharing of PDMP data between Florida and other states; and
- Provided for additional funding for treatment and other issues related to opioid abuse.

House Bill 451 (2019)

In 2019, the Florida Legislature passed HB 451 (ch. 2019-123, L.O.F.) that required each health care practitioner to, prior to treating a patient with anesthesia or a Schedule II opioid medication in a non-emergency situation: inform the patient of available nonopioid alternatives for the treatment of pain; discuss the advantages and disadvantages of the use of nonopioid alternatives; provide the patient with the pamphlet created by the Department of Health (DOH); and document any alternatives considered in the patient's record.

Opioid Abuse

Both nationally and in Florida, opioid addiction and abuse has become an epidemic. The Florida Department of Law Enforcement (FDLE) reported that, when compared to 2016, 2017 saw:

- 6,178 (8 percent more) opioid-related deaths;
- 6,932 (4 percent more) individuals died with one or more prescription drugs in their system;[8]
- 3,684 (4 percent more) individuals died with at least one prescription drug in their system that was identified as the cause of death;
- Occurrences of heroin increased by 3 percent and deaths caused by heroin increased by 1 percent;
- Occurrences of fentanyl increased by 27 percent and deaths caused by fentanyl increased by 25 percent;
- Occurrences hydrocodone increased by 6 percent while deaths caused by hydrocodone decreased by 8 percent;
- Occurrences of buprenorphine and deaths caused by buprenorphine increased by 19 percent.[9]

The federal Centers for Disease Control and Prevention (CDC) estimates that the nationwide cost of opioid misuse at $78.5 billion per year.[10]

However, in Florida, many of the trends above have begun to reverse. Compared with 2017, 2018 saw:

- 5,576 (10 percent less) opioid-related deaths;

[8] The drugs were identified as either the cause of death or merely present in the decedent. These drugs may have also been mixed with illicit drugs and/or alcohol. These drugs were not necessarily opioids.
[9] FDLE, *Drugs Identified in Deceased Persons by Florida Medical Examiners, 2017 Annual Report* (Nov. 2018), available at http://www.fdle.state.fl.us/MEC/Publications-and-Forms/Documents/Drugs-in-Deceased-Persons/2017-Annual-Drug-Report.aspx.
[10] National Institute on Drug Abuse, *Opioid Overdose Crisis* (Rev. Jan. 2019), https://www.drugabuse.gov/drugs-abuse/opioids/opioid-overdose-crisis (last visited on Jan. 23, 2020).

- 6,701 (3 percent less) individuals died with one or more prescription drugs in their system;[11]
- 3,693 (9 more) individuals died with at least one prescription drug in their system that was identified as the cause of death;
- Occurrences of heroin decreased by 11 percent and deaths caused by heroin decreased by 15 percent;
- Occurrences of fentanyl increased by 29.5 percent and deaths caused by fentanyl increased by 35 percent;
- Occurrences hydrocodone increased by 19 percent while deaths caused by hydrocodone decreased by 26 percent;
- Occurrences of oxycodone decreased by 8 percent and deaths caused by oxycodone decreased by 12 percent.[12]

III. Effect of Proposed Changes:

The bill amends the requirement that a health care practitioner advise a patient of nonopioid alternatives before providing opioid anesthesia or prescribing, ordering, dispensing, or administering an opioid drug.

The bill amends this requirement by:

- Authorizing a health care practitioner to choose to advise the patient *or his or her representative*;
- Providing that a health care practitioner is not required to discuss nonopioid alternatives when treating a patient in a hospital critical care unit or an emergency department, or when treating a patient receiving hospice services; and
- No longer applying it to "dispensing" or "administering" of an opioid.For example, a healthcare practitioner does not need to advise a patient of nonopioid alternatives each time he or she gives the patient a dose of a prescribed opioid.

Both the bill and current law apply only to those opioid drugs that are listed as Schedule II controlled substances in s. 893.03, F.S. or 21 U.S.C. s. 812, including fentanyl, oxycodone, hydrocodone, codeine, and morphine.

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[11] The drugs were identified as either the cause of death or merely present in the decedent. These drugs may have also been mixed with illicit drugs and/or alcohol. These drugs were not necessarily opioids.
[12] FDLE, *Drugs Identified in Deceased Persons by Florida Medical Examiners 2018 Annual Report* (Nov. 2019) https://www.fdle.state.fl.us/MEC/Publications-and-Forms/Documents/Drugs-in-Deceased-Persons/2018-Annual-Drug-Report.aspx (last visited on Jan. 23, 2020).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 456.44 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Perry

8-00361B-20 20201080__

A bill to be entitled

An act relating to nonopioid alternatives; amending s. 456.44, F.S.; revising exceptions to certain controlled substance prescribing requirements; clarifying that a certain patient or patient representative must be informed of specified information, have specified information discussed with him or her, and be provided with an electronic or printed copy of a specified educational pamphlet; providing an effective date.

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

Section 1. Paragraph (c) of subsection (7) of section 456.44, Florida Statutes, is amended to read:

456.44 Controlled substance prescribing.—

(7) NONOPIOID ALTERNATIVES.—

(c) Except when a patient is receiving care in a hospital critical care unit or in an emergency department or a patient is receiving hospice services under s. 400.6095 ~~in the provision of emergency services and care, as defined in s. 395.002~~, before providing care that requires the administration of anesthesia involving the use of an opioid drug listed as a Schedule II controlled substance in s. 893.03 or 21 U.S.C. s. 812, or prescribing or ordering~~, ordering, dispensing, or administering~~ an opioid drug listed as a Schedule II controlled substance in s. 893.03 or 21 U.S.C. s. 812 for the treatment of pain, a health care practitioner who prescribes or orders an opioid drug~~, excluding those licensed under chapter 465,~~ must:

8-00361B-20 20201080__

1. Inform the patient or the patient's representative of available nonopioid alternatives for the treatment of pain, which may include nonopioid medicinal drugs or drug products, interventional procedures or treatments, acupuncture, chiropractic treatments, massage therapy, physical therapy, occupational therapy, or any other appropriate therapy as determined by the health care practitioner.

2. Discuss with the patient or the patient's representative the advantages and disadvantages of the use of nonopioid alternatives, including whether the patient is at a high risk of, or has a history of, controlled substance abuse or misuse and the patient's personal preferences.

3. Provide the patient or the patient's representative, electronically or in printed form, with the educational pamphlet described in paragraph (b).

4. Document the nonopioid alternatives considered in the patient's record.

Section 2. This act shall take effect July 1, 2020.

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

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: January 29, 2020

I respectfully request that **Senate Bill #1080**, relating to Nonopioid Alternatives, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

W. Keith Perry

Senator Keith Perry
Florida Senate, District 8

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 Rules

BILL:	SB 7034
INTRODUCER:	Criminal Justice Committee
SUBJECT:	OGSR/Residential Facilities Serving Victims of Sexual Exploitation
DATE:	February 17, 2020 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Cox	Jones		**CJ Submitted as Committee Bill**
1.	Hackett	McVaney	GO	**Favorable**
2.	Cox	Phelps	RC	**Favorable**

I. Summary:

SB 7034 amends ss. 409.1678 and 787.06, F.S., to save from repeal the public record exemptions relating to location information of safe houses, safe foster homes, other residential facilities serving child victims of commercial sexual exploitation, and residential facilities serving adult victims of human trafficking involving commercial sexual activity, respectively.

Safe houses and safe foster homes are certified by the Department of Children and Families (DCF) to care for sexually exploited children. Safe houses and safe foster homes must provide a safe, separate, and therapeutic environment tailored to the needs of specified commercially sexually exploited children who have endured significant trauma.

Current law makes confidential and exempt from public disclosure information about the location of safe houses, safe foster homes, other residential facilities serving child victims of sexual exploitation, and residential facilities serving adult victims of human trafficking involving commercial sexual activity. However, the information may be provided to any agency in order to maintain health and safety standards and to address emergency situations.

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. The exemptions contained in ss. 409.1678 and 787.06, F.S., are scheduled to repeal on October 2, 2020. This bill removes these scheduled repeals to continue the confidential and exempt status of the information.

The bill does not appear to have a fiscal impact on state or local governments. Costs incurred by an agency in responding to public records requests regarding these exemptions should be offset by authorized fees. See Section V. Fiscal Impact Statement.

The bill takes effect on October 1, 2020.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[1] The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[2]

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.[3] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[4] Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.[5]

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[6] The Florida Supreme Court has interpreted the statutory definition of "public record" to include "material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.[7]

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the

[1] FLA. CONST. art. I, s. 24(a).
[2] *Id*.
[3] *See* Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020).
[4] *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).
[5] Section 119.01(1), F.S. Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[6] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."
[7] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc*., 379 So. 2d 633, 640 (Fla. 1980).

custodian of the public record.[8] A violation of the Public Records Act may result in civil or criminal liability.[9]

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.[10] The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.[11]

General exemptions from the public records requirements are contained in the Public Records Act.[12] Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.[13]

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." Custodians of records designated as "exempt" are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.[14] Custodians of records designated as "confidential and exempt" may not disclose the record except under circumstances specifically defined by the Legislature.[15]

Open Government Sunset Review Act

The Open Government Sunset Review Act[16] (the Act) prescribes a legislative review process for newly created or substantially amended[17] public records or open meetings exemptions, with specified exceptions.[18] It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[19]

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.[20]

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[8] Section 119.07(1)(a), F.S.
[9] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[10] FLA. CONST. art. I, s. 24(c).
[11] *Id*. *See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).
[12] *See, e.g.*, s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).
[13] *See, e.g.*, s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).
[14] *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).
[15] *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).
[16] Section 119.15, F.S.
[17] An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.
[18] Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.
[19] Section 119.15(3), F.S.
[20] Section 119.15(6)(b), F.S.

An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;[21]
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;[22] or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.[23]

The Act also requires specified questions to be considered during the review process.[24] In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.[25] If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.[26]

Human Trafficking

Human trafficking is a form of modern-day slavery, which involves the exploitation of persons for commercial sex or forced labor.[27] An estimated 40.6 million persons were the victims of human trafficking in 2016, with one in four victims being children.[28] Human traffickers use various techniques to instill fear in victims, including violence, threats, deception, or keeping

[21] Section 119.15(6)(b)1., F.S.
[22] Section 119.15(6)(b)2., F.S.
[23] Section 119.15(6)(b)3., F.S.
[24] Section 119.15(6)(a), F.S. The specified questions are:
- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

[25] *See generally* s. 119.15, F.S.
[26] Section 119.15(7), F.S.
[27] Section 787.06(1)(a), F.S. Further, s. 787.06(2)(d), F.S., defines the term "human trafficking" to mean the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person.
[28] International Labour Organization, *Forced labour, modern slavery and human trafficking*, available at http://www.ilo.org/global/topics/forced-labour/lang--en/index.htm (last visited December 17, 2019).

victims under lock and key.[29] Other practices frequently used include isolating victims from the public and family members; confiscating passports, visas, or other identification documents; using or threatening to use violence toward victims or their families; telling victims that they will be imprisoned or deported for immigration violations if they contact authorities; and controlling the victims' funds by holding the money.[30] It is estimated that human trafficking generates $150 billion dollars in illegal profits a year.[31]

Residential Treatment for Certain Victims of Human Trafficking

Safe Houses

A "safe house" is a group residential placement certified by the Department of Children and Families (DCF) to care for sexually exploited children.[32] Safe houses must provide safe, separate, and therapeutic environments tailored to the needs of commercially sexually exploited children who have endured significant trauma and are not eligible for relief and benefits under the federal Trafficking Victims Protection Act.[33] Safe houses must:

- Use strength-based and trauma informed approaches to care;
- Serve exclusively one sex;
- Group child victims by age or maturity level;
- Care for child victims in a manner that separates them from children with other needs;
- Have staff members who are awake and on duty 24 hours a day; and
- Provide appropriate security for the facility through specified means.[34]

Additionally, safe houses serving children who have been sexually exploited must conduct a comprehensive assessment of the needs of each resident and provide a variety of services to meet such needs, including, in part:

- Victim-witness and family counseling;
- Behavioral health care;
- Treatment and intervention for sexual assault;
- Life skills and workforce training;
- Mentoring by a survivor of commercial sexual exploitation if available; and
- Substance abuse screening.[35]

Safe houses are inspected by DCF prior to certification and annually thereafter.[36]

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[29] The Polaris Project, *The Facts*, available at https://polarisproject.org/human-trafficking/facts (last visited December 17, 2019).
[30] *Id*.
[31] International Labour Organization, *Profits and Poverty: The Economics of Forced Labour*, available at http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_243391/lang--en/index.htm (last visited December 17, 2019).
[32] Section 409.1678(1)(b), F.S.
[33] Section 409.1678(2)(a), F.S.
[34] Section 409.1678(2)(c), F.S. Safe houses must also be licensed under s. 409.175, F.S.
[35] Section 409.1678(2)(d), F.S.
[36] Section 409.1678(2)(f), F.S.

Safe Foster Homes

A "safe foster home" is a family foster home certified by DCF to care for sexually exploited children.[37] The state requires safe foster homes provide the same services and meet the same requirements as safe houses, except the requirement to have staff awake and on duty 24 hours a day does not apply.[38]

Additional Residential Facilities

Traditional residential facilities serve both children and adults who are victims of sexual exploitation. If these facilities serve adults, they cannot be designated safe houses or safe foster homes.[39]

Public Records Exemption Under Review

In 2015, the Legislature created public record exemptions for information about the location of safe houses, safe foster homes, residential facilities serving victims of commercial sexual exploitation, and residential facilities serving adult victims of human trafficking. Specifically, the information regarding the location of these facilities held by an agency is confidential and exempt from public records requirements. However, the confidential and exempt information may be provided to any agency as necessary to maintain health and safety standards and to address emergency situations in the residential facility. The public record exemptions do not apply to facilities licensed by the Agency for Health Care Administration.[40]

The 2015 public necessity statement[41] for the exemptions provides that:

> Safe houses, safe foster homes, and other residential facilities serving victims of sexual exploitation . . . or adult victims of human trafficking involving commercial sexual activity, are intended as refuges for sexually exploited victims from those who exploited them. If the individuals who victimized these people were able to learn the location of such facilities, they may attempt to contact their victims, exploit their vulnerabilities, and return them to the situations in which they were victimized. Even without the return of these victims to their former situations, additional contact with those who victimized them would have the effect of continuing their victimization and inhibiting their recoveries. Additionally, knowledge about the location of safe houses, safe foster homes, and other residential facilities serving victims of sexual exploitation . . . or adult victims of human trafficking involving commercial sexual activity, could enable other individuals to locate and attempt to victimize the residents.[42]

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[37] Section 409.1678(1)(a), F.S.
[38] Section 409.1678(2)(c)5., F.S.
[39] Section 409.1678(1)(a) and (b), F.S. The definitions of "safe foster home" and "safe house" are specifically restricted to "sexually exploited children."
[40] Chapter 2015-147, L.O.F., codified as ss. 409.1678(6) and 787.06(9), F.S.
[41] FLA. CONST. art. I, s. 24(c), requires each public record exemption state with specificity the public necessity justifying the exemption.
[42] Chapter 2015-147, L.O.F.

During the 2019 interim, Committee staff met with staff from DCF and the Department of Legal Affairs (DLA) to discuss the exemptions as part of the review process. DCF, the entity which certifies safe houses and safe foster homes, stated that as of 2019 there were seven safe houses and 28 safe foster homes operating in the state. DCF and DLA staff indicated that they have not received any complaints concerning the exemptions nor did they encounter issues in implementing the exemptions. Neither agency was aware of any litigation involving the exemptions. DCF and DLA recommended the exemptions be reenacted as is.

III. Effect of Proposed Changes:

The bill removes the scheduled repeal date of the public record exemptions, thereby maintaining the confidential and exempt status for information about the location of safe houses, safe foster homes, other residential facilities serving child victims of commercial sexual exploitation, and residential facilities serving adult victims of human trafficking involving commercial sexual activity.

The bill takes effect on October 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Voting Requirement

Article I, s. 24(c), of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. The bill continues the current public records exemption under sunset review; it does not expand this exemption or create a new one. Therefore, a two-thirds vote of the members present and voting for final passage of the bill is not required.

Public Necessity Statement

Article I, s. 24(c), of the State Constitution requires a bill that creates or expands an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. The bill continues the current public records exemption under sunset review; it does not expand this exemption or create a new one. Therefore, the bill does not require a public necessity statement.

Breadth of Exemption

Article I, s. 24(c), of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The public records exemption appears to be a reasonable measure to prevent release of information about the location of safe houses, safe foster homes, other residential facilities serving child victims of commercial sexual exploitation, and residential facilities serving adult victims of human trafficking involving commercial sexual activity.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will continue to be subject to the cost associated with an agency making redactions in response to a public records request.

C. Government Sector Impact:

The bill does not appear to have a fiscal impact on state or local governments. Costs incurred by an agency in responding to public records requests regarding these exemptions should continue to be offset by authorized fees.[43]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[43] Section 119.07(2) and (4), F.S.

VIII. Statutes Affected:

This bill substantially amends sections 409.1678 and 787.06 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By the Committee on Criminal Justice

591-02258-20 20207034__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 409.1678, F.S.; abrogating the scheduled repeal of provisions relating to location information of specified places that serve child victims of commercial sexual exploitation; amending s. 787.06, F.S.; abrogating the scheduled repeal of provisions relating to location information of residential facilities that offer services for certain victims of human trafficking; providing an effective date.

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

Section 1. Subsection (6) of section 409.1678, Florida Statutes, is amended to read:

409.1678 Specialized residential options for children who are victims of commercial sexual exploitation.—

(6) LOCATION INFORMATION.—

(a) Information about the location of a safe house, safe foster home, or other residential facility serving child victims of commercial sexual exploitation, as defined in s. 409.016, which is held by an agency, as defined in s. 119.011, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to such confidential and exempt information held by an agency before, on, or after the effective date of the exemption.

(b) Information about the location of a safe house, safe foster home, or other residential facility serving child victims

591-02258-20 20207034__

of commercial sexual exploitation, as defined in s. 409.016, may be provided to an agency, as defined in s. 119.011, as necessary to maintain health and safety standards and to address emergency situations in the safe house, safe foster home, or other residential facility.

(c) The exemptions from s. 119.07(1) and s. 24(a), Art. I of the State Constitution provided in this subsection do not apply to facilities licensed by the Agency for Health Care Administration.

~~(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. Subsection (10) of section 787.06, Florida Statutes, is amended to read:

787.06 Human trafficking.—

(10)(a) Information about the location of a residential facility offering services for adult victims of human trafficking involving commercial sexual activity, which is held by an agency, as defined in s. 119.011, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to such confidential and exempt information held by an agency before, on, or after the effective date of the exemption.

(b) Information about the location of a residential facility offering services for adult victims of human trafficking involving commercial sexual activity may be provided to an agency, as defined in s. 119.011, as necessary to maintain health and safety standards and to address emergency situations

in the residential facility.

(c) The exemptions from s. 119.07(1) and s. 24(a), Art. I of the State Constitution provided in this subsection do not apply to facilities licensed by the Agency for Health Care Administration.

~~(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 3. This act shall take effect October 1, 2020.

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: January 29, 2020

I respectfully request that **Senate Bill #7034**, relating to OGSR/Residential Facilities Serving Victims of Sexual Exploitation, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

W. Keith Perry

Senator Keith Perry
Florida Senate, District 8

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 Rules

BILL:	CS/CS/SB 364
INTRODUCER:	Rules Committee; Community Affairs Committee; and Senators Rader, Torres, and others
SUBJECT:	Independent Living Task Force
DATE:	February 19, 2020 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Hendon	CF	**Favorable**
2.	Paglialonga	Yeatman	CA	**Fav/CS**
3.	Delia	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 364 creates a 26 member Independent Living Task Force (the task force) within the Florida Housing Finance Corporation (FHFC). The objective of the task force is to develop and evaluate policy proposals that incentivize building contractors and developers to create low-cost, supportive, and affordable housing for individuals who need such housing and who have a developmental disability or a mental illness. The task force is required to give special consideration to the needs of individuals with a developmental disability or a mental illness when developing policy proposals.

The task force must submit a written report containing findings, conclusions, and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than January 15, 2022.

The bill requires the FHFC to use existing resources to administer and support the task force.

The bill provides for the dissolution of the task force by January 1, 2022.

The bill takes effect upon becoming a law.

II. Present Situation:

Task Force Requirements under section 20.03, Florida Statutes

Section 20.03(8), F.S., defines "task force" to mean an "advisory body created without specific statutory enactment for a time not to exceed 1 year or created by specific statutory enactment for a time not to exceed 3 years and appointed to study a specific problem and recommend a solution or policy alternative related to that problem." This provision specifies that the existence of a task force terminates upon the completion of its assignment.

Independent Living

The Florida Statutes do not define the term "independent living." "Independent living" can refer to when an elderly person still has the physical and mental capacity to live independently but wants companionship or otherwise needs supportive services.[1] It can also encompass a living arrangement for people with disabilities who need supportive services.

In 1988, the Legislature created the Florida Independent Living Council.[2] The council is responsible for, among other things, jointly developing and submitting the State Plan for Independent Living.[3] The council works to ensure that individuals with disabilities have an opportunity for input into the development of the State Plan for Independent Living and work for systematic change in the areas that are the biggest barriers to people with disabilities participating fully in their communities.[4] The council describes the independent living philosophy as "promot[ing] consumer control of services, self-determination, and equal access and participation in every aspect of community life, to the level that individual wishes."[5]

Independent living communities allow healthy individuals to live on their own, but they do not offer assisted living or nursing services. Independent living communities can offer amenities such as transportation, security, yard maintenance, laundry service, group meals, and social and cultural activities.[6] Currently, there are over 200 independent living communities in Florida.[7]

Florida Housing Finance Corporation

The Florida Housing Finance Corporation (FHFC), a public corporation administratively housed within the Department of Economic Opportunity (DEO),[8] is the state's affordable housing finance agency. As such, the FHFC is responsible for increasing the amount of affordable

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[1] According to the senior living search website, aPlaceforMom, *Independent Living in Florida*, *available at:* http://www.aplaceformom.com/independent-living/florida (last visited Nov. 1, 2019).
[2] Chapter 88-214, Laws of Fla.
[3] Section 413.395, F.S.
[4] Floridasilc.org, *About Independent Living*, *available at:* https://www.floridasilc.org/independent-living/ (last visited November 1, 2019).
[5] *Id.*
[6] Seniorliving.org, *Selecting an Independent Living Community* (Feb. 14, 2011), *available at:* http://www.seniorliving.org/lifestyles/independent-living-communities/ (last visited Nov. 1, 2019).
[7] According to the senior living search website, aPlaceforMom, *Independent Living in Florida*, *available at:* http://www.aplaceformom.com/independent-living/florida (last visited Nov. 1, 2019).
[8] Section 420.504(1), F.S.

housing available to individuals and families by stimulating investment of private capital and encouraging public and private sector housing partnerships. To accomplish this, the FHFC uses federal and state resources to finance the development of safe, affordable homes and rental housing and to assist first-time homebuyers.[9]

Americans with Disabilities Act

The Americans with Disabilities Act of 1990 (ADA) is a federal law that prohibits discrimination against people with disabilities. Under the ADA, an individual with a disability is a person who:

- Has a physical or mental impairment that substantially limits one or more major life activities;
- Has a record of such an impairment; or
- Is regarded as having such an impairment.[10]

The ADA specifies that major life activities include but not limited to, "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working."[11] In addition to the above activities, the ADA also covers individuals with impaired bodily functions. Under the ADA, "a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions."[12]

In 2008, Congress amended the ADA to lower the burden for plaintiffs to prove that they meet the ADA's definition of disability.[13] The ADA specifies that the definition of disability "shall be construed in favor of broad coverage."[14]

Notwithstanding the broad interpretation of a "disability" by the ADA, some individuals are excluded from coverage. A person who is a current user of illegal drugs is not covered, but a person who has a substantial history of drug or alcohol abuse and addiction may be covered.[15] Persons with sexual behavior disorders are not covered.[16] Persons who have conditions of compulsive gambling, kleptomania, and pyromania are also not regarded as disabled by the ADA.[17]

[9] *See* ss. 420.502 and 420.507, F.S.
[10] 42 U.S.C. s. 12102(1)
[11] 42 U.S.C. s. 12102(2)(A)
[12] 42 U.S.C. s. 12102(2)(B)
[13] Green v. Cellco Partnership, 218 F.Supp.3d 157 (U.S. District Court D. Conn. 2016)
[14] *Id* at 162.
[15] The Council for Disability Rights, *The Americans with Disabilities Act: Frequently Asked Questions, available at:* http://disabilityrights.org/adafaq.htm (last visited Dec. 10, 2019).
[16] *Id*.
[17] *Id*.

U.S. Disability Statistics

Approximately 43 million Americans have physical or mental disabilities that are covered by the ADA.[18] The Council for Disability Rights estimates that the average U.S. Citizen has a 20 percent chance of becoming disabled during their lifetime and a 50 percent chance of having a family member with a disability.[19]

The unemployment rate[20] for persons with a disability was 8.0 percent in 2018, more than twice the rate of those with no disability (3.7 percent).[21] Although this is a great disparity, this comparison does not include a large proportion of persons who were not in this labor force[22] calculation. In 2018, about 8 out of every 10 people with a disability were not considered part of the labor force (employed or actively seeking employment) compared with about 3 in 10 of those with no disability.

Among persons ages 16 to 64, the employment-population ratio[23] for persons with a disability was 30.4 percent in 2018.[24] Alternatively, the employment-population ratio for persons ages 16 to 64 without a disability was 74.0 percent in 2018.[25] The ratio for persons age 65 and older with a disability was 7.4 percent and the ratio for persons age 65 and older without a disability was 23.6 percent in 2018.[26] Although persons with a disability are less likely to be employed at an older age, persons of all ages with a disability were much less likely to be employed than those with no disability.[27]

III. Effect of Proposed Changes:

Section 1 creates s. 420.5075, F.S., to establish the Independent Living Task Force within the FHFC for administrative purposes only. The FHFC is to use existing and available resources to support the activities of the task force.

The bill directs the task force to evaluate policy proposals that incentivize building contractors and developers to create units within mixed-use developments for individuals who have a disability, as defined by the ADA. The task force is required to give special consideration to the needs of individuals with a developmental disability or a mental illness when developing policy proposals.

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[18] *Id.*
[19] *Id.*
[20] Unemployed persons are those who did not have a job, were available for work, and were actively looking for a job in the 4 weeks preceding the survey.
[21] Bureau of Labor Statistics, *Persons with a Disability: Labor Force Characteristics Summary*, *available at:* https://www.bls.gov/news.release/disabl.nr0.htm (last visited Dec. 10, 2019).
[22] Persons who are not employed, looking for employment, or considered unemployed are not in the labor force.
[23] The proportion of an economy's working-age population that is employed.
[24] Bureau of Labor Statistics, *Persons with a Disability: Labor Force Characteristics Summary*, *available at:* https://www.bls.gov/news.release/disabl.nr0.htm (last visited Dec. 10, 2019).
[25] *Id.*
[26] *Id.*
[27] *Id.*

The task force is to be chaired by the executive director of the FHFC, or his or her designee, and composed of 26 members, to include:

- The director of the Florida Housing Finance Corporation or his or her designee, who shall serve as chair of the task force;
- The director of the Agency for Persons with Disabilities or his or her designee;
- The Secretary of the Department of Children and Families, or his or her designee;
- The executive director of the Department of Economic Opportunity, or his or her designee;
- The Secretary of the Department of Business and Professional Regulation, or his or her designee;
- The executive director of the Commission for the Transportation Disadvantaged, or his or her designee;
- The Secretary of the Department of Elderly Affairs, or his or her designee;
- An individual appointed by the Governor;
- A representative from the Florida Supportive Housing Coalition;
- A representative from the Florida Housing Coalition;
- A representative from the Florida Independent Living Council;
- A representative from the ARC of Florida;
- A representative from the National Alliance on Mental Illness of Florida;
- A representative from the Florida League of Cities;
- A representative from the Florida Association of Counties;
- A representative from the Association of Florida Community Developers;
- A representative from the Associated Builders and Contractors of Florida;
- A representative from the Florida Association of Rehabilitation Facilities;
- A representative from the Florida Developmental Disabilities Council;
- A representative from the banking industry who finances mixed-use developments;
- A representative from the Coalition of Affordable Housing Providers;
- A representative from the Commercial Real Estate Development Association;
- A representative from the Florida Behavioral Health Association;
- A representative from the Florida Association of Managing Entities;
- A representative from the Florida Assisted Living Association; and
- An attorney who is a member in good standing of the Elder Law Section of The Florida Bar.

Members of the task force shall serve without compensation or reimbursement for per diem or travel expenses. The task force is directed to convene its first meeting by August 1, 2020. The task force must meet as often as necessary to fulfill its responsibilities under the bill, and meetings may be conducted in person, by teleconference, or by other electronic means.

The bill directs the task force to work in consultation with local and state government to identify potential barriers and opportunities in current law, recommend modifications to existing laws, rules, or policies, recommend financial and regulatory incentives, evaluate policy proposals, and propose funding mechanisms to incentivize building contractors and developers to create low-cost, supportive, and affordable housing units within mixed-use developments for individuals with disabilities.

The task force must submit a final report containing its findings, conclusions, and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1, 2021. The task force must dissolve on or before January 1, 2022.

Section 2 provides that the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill provides that the task force members are to serve without compensation and are not entitled to reimbursement for per diem or travel expense. Thus, to the extent travel is required, the members will incur associated costs.

C. Government Sector Impact:

The DEO anticipates that it will incur a minor amount of travel and other administrative expenses as the FHFC is housed within DEO, and it is the agency directed to use existing resources to administer and support the activities of the task force.

VI. Technical Deficiencies:

The bill requires the task force to submit a report to the Governor, Senate President, and Speaker of the House of Representatives by January 15, 2022, however the bill provides that the law expires on January 1, 2022. It is recommended that the expiration date be moved to a later date or the due date of the report be moved to an earlier date.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 420.5075 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Rules on February 19, 2020:
The committee substitute:

- Requires the task force to give special consideration to the needs of individuals with a developmental disability or a mental illness when developing policy proposals.
- Adds a representative from the Florida Association of Managing Entities;
- Changes the report submission deadlines from December 1, 2021 to January 15, 2022.

CS by Community Affairs on December 9, 2019:
The committee substitute:

- Replaces "developmental disability," as defined in s. 393.063, F.S., and "mental illness," as defined in s. 394.455, F.S., with "disability," as defined by the Americans with Disabilities Act in 42 U.S.C. s. 12102(1).
- Adds the Secretary of Elderly Affairs or his or her designee to the task force.
- Adds a representative from the Florida Behavioral Health Association to the task force.
- Changes first meeting deadline from June 1, 2020 to August 1, 2020.
- Changes report submission deadline from December 1, 2020 to December 1, 2021.
- Changes task force expiration date from January 1, 2021 to January 1, 2022.

B. Amendments:

None.

663092

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/19/2020	.	
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	.	
	.	

The Committee on Rules (Rader) recommended the following:

Senate Amendment

Delete lines 23 - 31
and insert:
(2) For purposes of this section, the term "disability" has the same meaning as provided in 42 U.S.C. s. 12102(1).
(3) The task force shall develop and evaluate policy proposals that incentivize building contractors and developers to create units within mixed-use developments which may be used as low-cost, supportive, and affordable housing for individuals who are in need of such housing and who have a disability. The

663092

task force shall give special consideration to the needs of individuals who have a developmental disability, as defined in s. 393.063, or a mental illness, as defined in s. 394.455, when developing and evaluating policy proposals under this section.

406430

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/19/2020	.	
	.	
	.	
	.	

The Committee on Rules (Rader) recommended the following:

Senate Amendment

Between lines 81 and 82
insert:
18. A representative from the Florida Association of Managing Entities.

591004

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/19/2020	.	
	.	
	.	
	.	

The Committee on Rules (Rader) recommended the following:

Senate Amendment

Delete lines 109 - 110
and insert:
(7) The task force shall submit a report by January 15, 2022, to the Governor, the President of the Senate, and the

By the Committee on Community Affairs; and Senators Rader, Torres, and Pizzo

578-02014-20 2020364c1

A bill to be entitled

An act relating to the Independent Living Task Force; creating s. 420.5075, F.S.; establishing the Independent Living Task Force within the Florida Housing Finance Corporation; defining the term "disability"; providing for duties, membership, and meetings of the task force; requiring the task force to submit a report to the Governor and the Legislature by a specified date; providing for expiration of the task force; providing an effective date.

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

Section 1. Section 420.5075, Florida Statutes, is created to read:

420.5075 Independent Living Task Force.—

(1) The Independent Living Task Force, a task force as defined in s. 20.03(8), is established within the Florida Housing Finance Corporation for administrative purposes only. The corporation shall use existing and available resources to administer and support the activities of the task force under this section.

(2) For purposes of this section, the term "disability" has the same meaning as provided in 42 U.S.C. s. 12102(1) of the Americans with Disabilities Act, as that definition exists on the effective date of this act.

(3) The task force shall develop and evaluate policy proposals that incentivize building contractors and developers to create units within mixed-use developments which may be used

578-02014-20 2020364c1

as low-cost, supportive, and affordable housing for individuals who are in need of such housing and who have a disability.

(4) The task force shall consist of the following members:

(a) The director of the Florida Housing Finance Corporation or his or her designee, who shall serve as chair of the task force.

(b) The director of the Agency for Persons with Disabilities or his or her designee.

(c) The Secretary of Children and Families or his or her designee.

(d) The executive director of the Department of Economic Opportunity or his or her designee.

(e) The Secretary of Business and Professional Regulation or his or her designee.

(f) The executive director of the Commission for the Transportation Disadvantaged or his or her designee.

(g) The Secretary of Elderly Affairs or his or her designee.

(h) An individual appointed by the Governor.

(i) The following members appointed by the director of the Florida Housing Finance Corporation:

1. A representative from the Florida Supportive Housing Coalition.

2. A representative from the Florida Housing Coalition.

3. A representative from the Florida Independent Living Council.

4. A representative from The Arc of Florida.

5. A representative from the National Alliance on Mental Illness-Florida.

6. A representative from the Florida League of Cities.

7. A representative from the Florida Association of Counties.

8. A representative from the Association of Florida Community Developers.

9. A representative from the Associated Builders and Contractors of Florida.

10. A representative from the Florida Association of Rehabilitation Facilities.

11. A representative from the Florida Developmental Disabilities Council.

12. A representative from the banking industry who finances mixed-use developments.

13. A representative from the Coalition of Affordable Housing Providers.

14. A representative from the Commercial Real Estate Development Association.

15. A representative from the Florida Behavioral Health Association.

16. A representative from the Florida Assisted Living Association.

17. An attorney who is a member in good standing with the Elder Law Section of The Florida Bar.

(5) Members of the task force shall serve without compensation and are not entitled to reimbursement for per diem or travel expenses. The task force shall convene its first meeting by August 1, 2020, and shall meet as often as necessary to fulfill its responsibilities under this section. Meetings may be conducted in person, by teleconference, or by other

electronic means.

(6) In consultation with the applicable local and state governmental entities, the task force shall:

(a) Identify potential barriers and opportunities in existing policies, rules, or laws to incentivize building contractors and developers to create low-cost, supportive, and affordable housing units for individuals with disabilities within mixed-use developments.

(b) Recommend modifications to existing policies, rules, or laws or propose new policies, rules, or laws, such as allowing greater density, which would allow for the creation of low-cost, supportive, and affordable housing units for individuals with disabilities within mixed-use developments.

(c) Recommend financial and regulatory incentives to encourage building contractors and developers to create low-cost, supportive, and affordable housing units for individuals with disabilities within mixed-use developments.

(d) Propose funding mechanisms for the development and maintenance of spaces for low-cost, supportive, and affordable housing units for individuals with disabilities within mixed-use developments.

(7) The task force shall submit a report by December 1, 2021, to the Governor, the President of the Senate, and the Speaker of the House of Representatives which includes its findings, conclusions, and recommendations.

(8) This section expires January 1, 2022.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Governmental Oversight and Accountability, *Vice Chair*
Agriculture
Appropriations Subcommittee on Health and Human Services
Children, Families, and Elder Affairs

JOINT COMMITTEE:
Joint Legislative Auditing Committee

SENATOR KEVIN J. RADER
29th District

December 11, 2019

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

Chair Benacquisto,

I respectfully request that you place CS/SB 364, relating to Independent Living Task Force, on the agenda of the Committee on Rules at your earliest convenience.

Should you have any questions or concerns, please feel free to contact me or my office. Thank you in advance for your consideration.

Kindest Regards,

Kevin Rader

Senator Kevin J. Rader
Florida Senate, District 29

cc: John B Phelps, Staff Director
Cynthia Futch, Administrative Assistant

REPLY TO:
☐ 5301 North Federal Hwy, Suite 135, Boca Raton, Florida 33487 (561) 443-8170
☐ 222 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

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

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

1105 (10-12)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/19/2020
Meeting Date

SB 0364
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic INDEPENDENT LIVING TASK FORCE

Name NATALIE KELLY

Job Title CEO, FLORIDA ASSOCIATION OF MANAGING ENTITIES

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing THE FLORIDA ASSOCIATION OF MANAGING ENTITES

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 388
INTRODUCER:	Senator Hooper
SUBJECT:	Citrus/Hernando Waterways Restoration Council
DATE:	February 17, 2020
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schreiber	Rogers	EN	**Favorable**
2.	Toman	Ryon	CA	**Favorable**
3.	Schreiber	Phelps	RC	**Favorable**

I. Summary:

SB 388 eliminates the Citrus/Hernando Waterways Restoration Council and the Citrus/Hernando Waterways Restoration Program.

II. Present Situation:

In 2003, in response to regional concerns for the health of Citrus and Hernando County springs and waterbodies, the Legislature created the Citrus/Hernando Waterways Restoration Council (Council).[1] The Council was created within the Withlacoochee and Coastal Rivers Basin Boards of the Southwest Florida Water Management District (SWFWMD). In 2006, the Legislature expanded the Council and its duties.[2] The Council must consist of 14 voting members: 7 appointed by the President of the Senate and 7 appointed by the Speaker of the House of Representatives. The Council must consist of representatives as follows:

- Two waterfront property owners from both Citrus and Hernando counties, including a property owner from the east side and west side of each county.
- An attorney from each county.
- A member of the board of directors of the chamber of commerce from each county.
- An environmental engineer from each county.
- An engineer from each county.
- A person from each county with training in biology or another scientific discipline.

[1] Chapter 2003-287, s. 1, Laws of Fla.; Citrus/Hernando Waterways Restoration Council, *2015 Report to the Legislature*, 1 (2015), *available at* https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/2015%20Report%20to%20the%20Legislature.pdf (last visited Jan. 15, 2020).

[2] Chapter 2006-43, Laws of Fla.

The members of the Council form two separate county task forces to review and make recommendations on specific waterways.[3] The Hernando County Task Force develops plans and recommendations for the waterways in Hernando County, and the Citrus County Task Force develops plans and recommendations for the waterways in Citrus County. The Council or task forces meet at the call of their respective chairs, at the request of six members of the Council or task force, or at the request of the chair of the governing board of SWFWMD. SWFWMD must provide administrative support to the Council and coordinate Council activities along with the Fish and Wildlife Conservation Commission (FWC) and the Department of Environmental Protection (DEP).

There is a technical advisory group to the Council, to which each of the following agencies must appoint one representative: SWFWMD, DEP, FWC, Department of Transportation, Coastal Rivers Basin Board, Withlacoochee River Basin Board, the public works departments of each county, and the U.S. Army Corps of Engineers.[4]

The 2003 legislation also created the Citrus/Hernando Waterways Restoration Program.[5] Under the program, FWC and SWFWMD, in conjunction with DEP, pertinent local governments, and the Council, must review existing restoration proposals to determine the most environmentally sound and economically feasible methods of improving the natural systems of the waterways in the two counties. FWC and other agencies must develop tasks for the enhancement of wildlife habitat. Subject to appropriation by the Legislature and other funding sources, the appropriate agencies must, through competitive bid, award contracts to implement program activities.

The legislation provides for the Council the following powers and duties:

- Review audits and all data specifically related to lake and river restoration techniques and sport fish population recovery strategies, including data and strategies for all of the following as they may apply to Citrus and Hernando County waterways:
  - Shoreline restoration.
  - Sand and other sediment control and removal.
  - Exotic species management.
  - Floating tussock management or removal.
  - Navigation.
  - Water quality.
  - Fish and wildlife habitat improvement.
- Evaluate whether additional studies are needed.
- Explore all possible sources of funding to conduct the restoration activities.
- Report to the President of the Senate and the Speaker of the House of Representatives before November 25 of each year on the progress of the restoration program and any recommendations for the next fiscal year.

[3] Citrus/Hernando Waterways Restoration Council, *2015 Report to the Legislature*, 3-4, 18-19 (2015), *available at* https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/2015%20Report%20to%20the%20Legislature.pdf (last visited Jan. 15, 2020).
[4] Chapter 2003-287, s. 1, Laws of Fla.
[5] Chapter 2003-287, s. 2, Laws of Fla.

In 2008, the Legislature's Joint Legislative Sunset Committee recommended that the Council be abolished.[6] In 2015, the Council submitted its most recent report to the Legislature.[7]

In 2014, SWFWMD formed the Springs Coast Steering, Management, and Technical Committees.[8] These groups manage and prioritize the district's five first-magnitude spring groups, including developing management plans for spring systems and identifying issues and solutions. SWFWMD's Springs Coast Steering and Management Committees have been active in 2019, including holding public meetings, giving presentations, and developing project lists to submit as funding requests to DEP.[9] According to SWFWMD, much of the work and many of the members of these committees coincide with the charge of the Council, which has not met since 2015.[10]

III. Effect of Proposed Changes:

SB 388 repeals two chapters in the Laws of Florida:

- Chapter 2003-287, Laws of Fla., which establishes the Citrus/Hernando Waterways Restoration Council (Council) and the Citrus/Hernando Waterways Restoration Program; and
- Chapter 2006-43, Laws of Fla., which increases the number of members on the Council by two, expands the duties of the Council's task forces to include all waterways in Citrus and Hernando counties, and requires the counties' respective public works departments to each appoint a representative to the technical advisory group.

The bill would eliminate the Council and the restoration program.

The bill states that the act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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[6] The Florida Legislature, *Report of the Joint Legislative Sunset Committee*, 11 (Mar. 2008), *available at* http://www.leg.state.fl.us/sunset/UserContent/docs/File/final.doc (last visited Jan. 15, 2020).
[7] Citrus/Hernando Waterways Restoration Council, *2015 Report to the Legislature* (2015), *available at* https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/2015%20Report%20to%20the%20Legislature.pdf (last visited Jan. 15, 2020).
[8] SWFWMD, *Springs Coast Steering, Management and Technical Committees*, https://www.swfwmd.state.fl.us/projects/springs/springs-coast-steering-management-and-technical-committees (last visited Jan. 15, 2020).
[9] SWFWMD, *Springs Coast Public Meetings*, https://www.swfwmd.state.fl.us/projects/springs/springs-coast-public-meetings (last visited Jan. 15, 2020).
[10] Letter from Cara Martin, Government and Community Affairs Office Chief, SWFWMD, *Citrus/Hernando Waterways Restoration Council* (Sept. 2019)(on file with the Senate Committee on Community Affairs).

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill repeals the following chapters of the Laws of Florida: 2003-287 and 2006-43.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Hooper

16-00712-20 2020388__

A bill to be entitled

An act relating to the Citrus/Hernando Waterways Restoration Council; repealing chapters 2003-287 and 2006-43, Laws of Florida; abolishing the Citrus/Hernando Waterways Restoration Council; providing an effective date.

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

Section 1. Chapter 2003-287, Laws of Florida, is repealed.

Section 2. Chapter 2006-43, Laws of Florida, is repealed.

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

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ED HOOPER
16th District

COMMITTEES:
Governmental Oversight and Accountability, Chair
Appropriations Subcommittee on Agriculture, Environment, and General Government
Appropriations Subcommittee on Health and Human Services
Health Policy
Infrastructure and Security
Joint Select Committee on Collective Bargaining, Alternating Chair
Joint Administrative Procedures Committee

January 22nd, 2020

Honorable Lizbeth Benacquisto, Chair
Committee on Rules
402 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Benacquisto,

I am writing to request that SB 388, Citrus/Hernando Waterways Restoration Council, be placed on the agenda to be heard in the Rules Committee.

I appreciate your consideration in this matter.

Sincerely,

Ed Hooper

Cc: Staff Director, John B. Phelps
Administrative Assistant, Cynthia Futch

REPLY TO:
☐ 3450 East Lake Road, Suite 305, Palm Harbor, Florida 34685-2411 (727) 771-2102
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Senate's Website: *www.flsenate.gov*

BILL GALVANO
President of the Senate

DAVID SIMMONS
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 Rules

BILL:	CS/CS/SB 1332
INTRODUCER:	Infrastructure and Security Committee; Community Affairs Committee; and Senator Hooper
SUBJECT:	Towing and Immobilizing Vehicles and Vessels
DATE:	February 17, 2020 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Paglialonga	Ryon	CA	**Fav/CS**
2.	Price	Miller	IS	**Fav/CS**
3.	Paglialonga	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1332 requires counties and municipalities to establish maximum rates for the towing and immobilization of vehicles and vessels and prohibits a county or municipality from enacting a rule or ordinance that imposes a fee or charge on authorized wrecker operators or towing businesses. The bill provides that an authorized wrecker operator or tow business may impose and collect an administrative fee or charge against the owner of a vehicle or vessel on behalf of a county or municipality and is only required to remit the fee or charge to the county or municipality after it has been collected. The bill provides that a wrecker operator or towing business who recovers, removes, or stores a vehicle or vessel must have a lien on the vehicle or vessel that includes the value of the reasonable administrative fee or charge imposed by a county or municipality.

The bill exempts certain counties with towing or immobilization licensing, regulatory, or enforcement programs as of January 1, 2020, from the prohibition on imposing a fee or charge on an authorized wrecker operator or a towing business.

The bill prohibits a municipality or county from enacting an ordinance or rule requiring an authorized wrecker operator or towing business to accept credit cards as a form of payment. The bill may have an indeterminate fiscal impact on local governments.

The bill takes effect October 1, 2020.

II. Present Situation:

County and Municipal Wrecker Operator Systems

A county or municipal government may contract with one or more wrecker operators to tow or remove wrecked, disabled, or abandoned vehicles from streets, highways, and accident sites.[1] After the establishment of such contract(s), the county or municipality must create a "wrecker operator system" to apportion towing assignments between the contracted wrecker services. This apportionment may occur through the creation of geographic zones, a rotation schedule, or a combination of those methods.[2] Any wrecker operator that is included in the wrecker operator system is an "authorized wrecker operator" in the jurisdiction, while any wrecker operation not included is an "unauthorized wrecker operator."[3]

Unauthorized wrecker operators are not permitted to initiate contact with the owner or operator of a wrecked or disabled vehicle.[4] If the owner or operator initiates contact, the unauthorized wrecker operator must disclose in writing, before the vehicle is connected to the towing apparatus:

- His or her full name;
- Driver license number;
- That he or she is not a member of the wrecker operator system;
- That the vehicle is not being towed for the owner's or operator's insurance company or lienholder;
- Whether he or she has an insurance policy providing $300,000 in liability coverage and $50,000 in on-hook cargo coverage; and
- The maximum charges for towing and storage.[5]

The unauthorized wrecker operator must disclose this information to the owner or operator in the presence of a law enforcement officer if an officer is present at the scene of the accident.[6]

It is a second degree misdemeanor for an unauthorized wrecker operator to initiate contact or to fail to provide required information after contact has been initiated.[7] An unauthorized wrecker operator misrepresenting his or her status as an authorized wrecker operator commits a first degree misdemeanor.[8] In either instance, the unauthorized wrecker operator's wrecker, tow truck, or other motor vehicle used during the offense may be immediately removed and impounded.[9]

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[1] Section 323.002(1)(c), F.S. The definition of "vehicle" does not include a vessel or trailer intended for the transport on land of a vessel. *See* s. 320.01, F.S. (defining "motor vehicle" for the purpose of issuance of motor vehicle licenses and separately defining a "marine boat trailer dealer" as a person engaged in "business of buying … trailers specifically designed to be drawn by another vehicle and used for the transportation on land of vessels.")
[2] *Id.*
[3] Section 323.002(1)(a)-(b), F.S.
[4] Section 323.002(2)(b), F.S.
[5] Section 323.002(2)(c), F.S.
[6] *Id.*
[7] *Id.*
[8] Section 323.002(2)(d), F.S.
[9] Section 323.002(2)(c) and (d), F.S.

Unauthorized wrecker operators are also prohibited from monitoring police radios to determine the location of wrecked or disabled vehicles.[10]

Counties must establish maximum rates for the towing of vehicles removed from private property, as well as the towing and storage of vehicles removed from the scene of an accident or from where the vehicle is towed at the request of a law enforcement officer. Municipalities are also authorized to adopt maximum rate ordinances. If a municipality enacts an ordinance to establish towing fees, the county ordinance will not apply within the municipality.[11] A county or municipality may not establish rates, including a maximum rate, for the towing of vessels.[12]

Vehicle Holds, Wrecker Operator Storage Facilities, and Liens

An investigating agency may place a hold on a motor vehicle stored within a wrecker operator's storage facility for up to five business days.[13] A hold may be applied when the officer has probable cause to believe the vehicle:

- Should be seized under the Florida Contraband Forfeiture Act or ch. 379, F.S.;
- Was used as the means of committing a crime;
- Is evidence that tends to show a crime has been committed; or
- Was involved in a traffic accident resulting in death or personal injury.[14]

An officer may also apply a hold when the vehicle is impounded under s. 316.193, F.S., (relating to driving under the influence), or s. 322.34, F.S., (relating to driving with a suspended or revoked license), or when the officer is complying with a court order.[15] The hold must be in writing and include the name and agency of the law enforcement officer placing the hold, the date and time the hold is placed on the vehicle, a general description of the vehicle, the specific reason for the hold, the condition of the vehicle, the location where the vehicle is being held, and the name and contact information for the wrecker operator and storage facility.[16]

The investigating agency must inform the wrecker operator within the five-day holding period if the agency intends to hold the vehicle for a longer time.[17] The vehicle owner is liable for towing and storage charges for the first five days. If the vehicle is held beyond five days, the investigating agency may choose to have the vehicle stored at a designated impound lot or to pay for storage at the wrecker operator's storage facility.[18]

A wrecker operator or other person engaged in the business of transporting vehicles or vessels who recovers, removes, or stores a vehicle or vessel possesses a lien on the vehicle or vessel for

[10] Section 323.002(2)(a), F.S.
[11] Sections 125.0103(1)(c) and 166.043(1)(c), F.S.
[12] *Compare* s. 125.0103(1)(c), F.S. (requiring a county to establish maximum rates for towing of vehicles) *with* s. 715.07, F.S. (towing of vehicles or vessels parked on private property).
[13] Section 323.001(1), F.S.
[14] Section 323.001(4)(a)-(e), F.S.
[15] Section 323.001(4)(f)-(g), F.S.
[16] Section 323.001(5), F.S.
[17] Section 323.001(2), F.S.
[18] Section 323.001(2)(a)-(b), F.S.

a reasonable towing fee and storage fee if the vehicle or vessel is removed upon instructions from:

- The owner of the vehicle or vessel;
- The owner, lessor, or authorized person acting on behalf of the owner/lessor of property on which the vehicle or vessel is wrongly parked (as long as the removal is performed according to s. 715.07, F.S.);
- The landlord or authorized person acting on behalf of a landlord, when the vehicle or vessel remains on the property after the expiration of tenancy and the removal is performed pursuant to enforcing a lien pursuant to s. 83.806, F.S., or for the removal of property left after a lease is vacated under s. 715.104, F.S.; or
- Any law enforcement agency.[19]

Authority for Local Governments to Charge Fees

Counties and municipalities do not have the authority to levy taxes, other than ad valorem taxes, except as provided by general law.[20] However, local governments possess the authority to impose user fees or assessments by local ordinance as such authority is within the constitutional and statutory home rule powers of local governments.[21] The key distinction between a tax and a fee is that fees are voluntary and benefit particular individuals in a manner not shared by the public at large.[22] On the other hand, a tax is a "forced charge or imposition, operating whether we like it or not and in no sense depends on the will or contract of the one on whom it is imposed."[23] Usually, a fee is applied for the use of a service and is tied directly to the cost of providing the service. Money collected from a fee is not applied to uses other than to provide the service for which the fee is applied. An administrative fee for towing and storage services may be permissible to the extent the fee provides a specific benefit to vehicle owners.[24]

Fees Related to Towing, Storage, and Wrecker Operators

Some municipalities impose an administrative fee on vehicles towed by an authorized wrecker operator if the vehicle is seized or towed in connection with certain misdemeanors or felonies. The towing company collects the administrative fee on behalf of the municipal government and, in addition to towing and storage fees, must be paid before the towing company releases the vehicle to the registered owner or lienholder.

The City of Sarasota seizes the vehicle of those arrested for crimes related to drugs or prostitution.[25] The registered owner of the vehicle is then given two options:

- The registered owner may request a hearing where the city must show by a preponderance of the evidence that the vehicle was used to facilitate the commission of an act of prostitution or any violation of ch. 893, F.S., the Florida Comprehensive Drug Abuse Prevention and

[19] Section 713.78(2), F.S.
[20] FLA. CONST., art. VII, s. 1(a).
[21] *City of Boca Raton v. State*, 595 So. 2d 25, 30 (Fla. 1992).
[22] *City of Miami v. Quik Cash Jewelry & Pawn, Inc.*, 811 So.2d 756, 758 (Fla. 3rd DCA 2002).
[23] *Id*.
[24] *See Jasinski v. City of Miami*, 269 F. Supp. 2d 1341, 1348 (S.D. Fla. 2003).
[25] Sarasota Police Department, *Vehicle Seizure Program*, *available at* https://www.sarasotapd.org/about-us/vehicle-seizure-program (last visited Jan. 13, 2020).

Control Act. The owner may post a bond equal to the civil penalty ($500), hearing costs ($50), and towing and storage fees for receiving the vehicle back, pending the outcome of the hearing; or the owner may leave the vehicle in impound, incurring additional fees; or
- The registered owner may waive the right to a hearing and pay the civil penalty ($500).

If the registered owner of the vehicle is unable to pay the administrative penalty within 35 days, the city disposes of the vehicle. The City of Bradenton uses a similar process and rate structure.[26]

Other municipalities have enacted ordinances charging an administrative fee for any vehicle impoundment associated with an arrest. For example, the City of Sweetwater imposes an "impoundment administrative fee" on all vehicles seized incident to an arrest. The fee is $500 if the impoundment stems from a felony arrest and $250 if the impoundment stems from a misdemeanor.[27]

The City of Winter Springs imposes an administrative fee for impoundment arising from twelve offenses enumerated in the authorizing ordinance, ranging from prostitution to dumping litter weighing more than 15 pounds.[28] The registered owner may request a hearing, either accruing additional storage fees pending the hearing or posting a bond equal to the amount of the administrative fee ($550). If the registered owner waives the right to a hearing, the administrative fee is reduced to $250.

By contrast, some municipalities require wrecker services to pay a monthly fee for serving as authorized wrecker operators. For example, the contract between the City of Sarasota and a wrecker operator requires the operator to pay the city $10,151 per month for "the opportunity to provide" wrecker services, as well as $500 for each impounded vehicle sold by the wrecker service.[29]

Additionally, a county or municipality may require a fee from a towing business to be licensed to operate within that county or municipality. For example, to operate a towing business in Miami-Dade County a person or corporation must apply to be a registered towing business with the county, which includes a $412 annual fee, a vehicle safety inspection with a $94 decal fee, proof of insurance requirements, and background checks ($24 fee) of the owners of the towing business.[30]

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[26] Bradenton, Fla. Code of Ordinances, ch. 54, art. IV, *available at* https://library.municode.com/fl/bradenton/codes/code_of_ordinances?nodeId=PTIICOOR_CH54OFMIPR_ARTIVIMMOVEUSFAPRDRRECR (last visited Jan. 13, 2020).
[27] Sweetwater, Fla. Code of Ordinances, ch. 42-1, s. 42.1(c), *available at* https://library.municode.com/fl/sweetwater/codes/code_of_ordinances?nodeId=PTIICOOR_CH42MOVETR_ARTIINGE_S42-1IMMOVE (last visited Jan. 13, 2020).
[28] Winter Springs, Fla. Code of Ordinances, ch. 12, art. V., s. 12-100, *available at* https://library.municode.com/fl/winter_springs/codes/code_of_ordinances?nodeId=PTIICOOR_CH12MOVETR_ARTVIMMOVE_S12-100IMMOVEUSFACEMICRPATRRE (last visited Jan. 13, 2020).
[29] City of Sarasota, *Agreement for Wrecker Towing and Storage Services* (May 5, 2010) (on file with the Senate Committee on Community Affairs).
[30] Miami-Dade County, *Towing License*, *available at* http://www.miamidade.gov/licenses/towing.asp (last visited Jan. 13, 2020).

Towing from Private Property

A vehicle or vessel may be towed at the direction of an owner or lessee of real property, or their designee if the vehicle or vessel is parked on the property without permission.[31] A person regularly engaged in the business of towing vehicles or vessels must conduct the tow. The towing or removal of any vehicle or vessel from private property without the consent of the registered owner or another legally authorized person in control of that vehicle or vessel is subject to strict compliance with certain conditions and restrictions. These conditions and restrictions include:[32]

- Any towed or removed vehicle or vessel must be stored at a site within a specified distance of the point of removal.[33]
- The towing company must notify local law enforcement within 30 minutes of completing the tow of the storage site; the time the vehicle or vessel was towed; and the make, model, color, and license plate number of the vehicle or description and registration number of the vessel. The towing truck operation is required to record the name of the law enforcement officer who received the information in the trip record.
- The owner of a vehicle or vessel must be allowed to redeem the vehicle or vessel from the towing company if the owner seeks the return before the tow has occurred. The towing company may charge a reasonable service fee of up to one-half of the posted towing rate for the return of the vehicle or vessel and may tow the vehicle or vessel if the owner is unable to pay the fee after a reasonable opportunity.
- A towing company may not pay or accept money in exchange for the privilege of towing or removing vehicles or vessels from a particular location.
- If the towing company requires the owner of a vehicle to pay the costs of towing and storage before redemption, the towing company must file and keep on record its rate schedule with the local law enforcement agency and post the rate schedule at the storage site.
- Trucks and wreckers used by the towing company must have the name, address, and telephone number of the company printed on both sides of the vehicle in contrasting letters. The name of the towing company must be in 3-inch or taller permanently affixed letters, while the address and telephone number must be in 1-inch or taller permanently affixed letters.
- The towing company must exercise reasonable care when entering a vehicle or vessel to remove it. The towing company is liable for any damage to the vehicle caused by failure to exercise reasonable care.
- The vehicle or vessel must be released to its owner within one hour after request. The owner maintains a right to inspect the vehicle or vessel, and the towing company operation may not require a release or waiver of damages to be signed as a condition of returning the vehicle. The towing company operator must issue a detailed, single receipt to the owner of the vehicle or vessel.

[31] Section 715.07(2), F.S.
[32] Section 715.07(2)(a), F.S.
[33] Section 715.07(2)(a)1.a., F.S. The vehicle or vessel must be stored within a 10-mile radius of the removal point in a county with a population of at least 500,000 and within a 15-mile radius of the removal point in a county with a population of fewer than 500,000. If no towing business operated within the given area, these radiuses are extended to 20 miles (for a county with a population of at least 500,000) and 30 miles (for a county with a population of fewer than 500,000). The site must be open from 8 am to 6 pm when the towing business is in operation and must post a telephone number where the operator of the site can be reached when the site is closed. The operator must return to the site within one hour.

Additionally, a vehicle or vessel may not be towed without consent of its owner, except from property appurtenant to a single-family residence, unless a notice is posted which states the area in which that vehicle or vessel is parked is reserved or otherwise unavailable for unauthorized vehicles or that the vehicle or vessel is subject to being removed at the owner's or operator's expense and the notice meets the following requirements:[34]

- The notice is placed prominently at each driveway access or curb cut, within five feet from the public right-of-way line. If the property has no curbs or access barriers, signs must be posted at least once every 25 feet of lot frontage.
- The notice must indicate, in not less than 2-inch high, light-reflective letters on a contrasting background, that unauthorized vehicles will be towed away at the owner's expense and contain the words "tow-away zone" in letters not less than 4 inches high.
- The notice must provide the name and telephone number of the towing company.
- The sign containing the notices must be permanently installed in such a way that the words "tow-away zone" is between three and six feet above ground level and the sign must have been continuously maintained on the property for not less than 24 hours before the towing of any vehicle or vessel.
- Local governments may also require permitting and inspection of signage before any towing is authorized.
- A business with 20 or fewer parking spaces may satisfy the requirement by prominently displaying a sign stating "Reserved Parking for Customers Only Unauthorized Vehicles or Vessels Will be Towed Away At the Owner's Expense" in not less than 4-inch high, light-reflective letters on a contrasting background.
- A property owner towing or removing vessels from real property must post a notice, consistent with the requirements in the statute which apply to vehicles,[35] that unauthorized vehicles or vessels will be towed away at the owner's expense.

A vehicle or vessel may be towed even in the absence of a tow-away zone sign if the vehicle or vessel is parked in such a way that it restricts the normal operation of a business or restricts access to a private driveway and the business owner or lessee requests the tow.[36]

A county or municipality may adopt additional standards, including regulation of the rates charged when a vehicle or vessel is towed from private property.[37]

III. Effect of Proposed Changes:

The bill authorizes a county or municipality to regulate the rates for the towing or immobilization of vessels. A county or municipality must establish a maximum rate that may be charged for the towing or immobilization of a vessel.

The bill prohibits a county or municipality from enacting a rule or ordinance that imposes a fee or charge on authorized wrecker operators or a towing business. The bill defines the term

[34] Section 715.07(2)(a)5, F.S.
[35] These requirements are contained in s. 715.07(2)(a)5.a.-f., F.S.
[36] Section 715.07(2)(a)5, F.S.
[37] Section 715.07(2)(b), F.S.

"towing business" as a business providing towing services for monetary gains. The prohibition would not impact the ability of the county or municipality to levy a business tax or impose a reasonable administrative fee or charge by ordinance on the legal owner of a vehicle or vessel to cover the cost of enforcement, including parking enforcement, by the county or municipality when the vehicle or vessel is towed from public property. The administrative fee may not exceed 25 percent of the maximum towing rate.

The bill authorizes an authorized wrecker operator or towing business to impose and collect the administrative fee and provides that the authorized wrecker operator or towing business is not required to remit the fee to the county or municipality until it is collected. The bill requires the administrative fee to be included as part of the lien on the vehicle or vessel held by the towing operator.

The prohibition on county ordinances or rules that impose a fee or tax on authorized wrecker operators or towing businesses does not apply to tow or immobilization licensing, regulatory, or enforcement programs in effect on January 1, 2020, in charter counties where:

- 90 percent of the county's population lives in incorporated municipalities;[38]
- The county contains at least 38 incorporated municipalities within its territorial boundaries as of January 1, 2020;[39] or
- The county is a county as defined in s. 125.011(1), F.S.

These counties may continue to operate their existing towing or immobilization licensing, regulatory, or enforcement programs and are authorized to levy an administrative fee for enforcement costs. A county as defined in s. 125.011(1), F.S., is prohibited from imposing any new business tax, fee, or charge that was not in effect on January 1, 2020, on a towing business or authorized wrecker operator.

The bill prohibits a county or municipality from adopting or enforcing an ordinance that imposes any charge, cost, expense, fine, fee, or penalty on the registered owner of a vehicle or vessel or on an authorized wrecker operator when the vehicle or vessel is removed and impounded by an authorized wrecker operator. This prohibition does not apply to a reasonable administrative fee or charge, limited to 25 percent of the maximum towing rate, to cover the cost of enforcement and does not apply to the continuing operation of towing or immobilization licensing, regulatory, or enforcement programs in grandfathered charter counties.

The bill prohibits a municipality or county from enacting an ordinance or rule requiring an authorized wrecker operator or towing business to accept credit cards as a form of payment. This prohibition does not apply to an ordinance or rule adopted before January 1, 2020. The bill requires an authorized wrecker operator or towing business that does not accept credit cards as a form of payment to maintain an operable automatic teller machine for use by the public at its place of business.

[38] As of April 1, 2018, more than 90 percent of the populations of Broward County and Duval County live in incorporated areas. EDR, *Florida Population Estimates for Counties and Municipalities, available at:* http://edr.state.fl.us/Content/population-demographics/data/index-floridaproducts.cfm (last visited Jan. 16, 2020). Broward County operates a towing or immobilization licensing, regulatory, or enforcement program, while Duval County does not.
[39] As of Oct. 1, 2019, only Palm Beach County has more than 38 municipalities. *See id.* (Palm Beach County has 39 municipalities).

The bill revises the requirement that a tow-away zone notice must be placed within five feet from the public right-of-way line and instead requires the tow-away zone notice be placed within ten feet of the "road," as defined in s. 334.03(22), F.S.

The bill revises several provisions currently applicable to a person in control of a vehicle or vessel, making these provisions applicable also to those in custody of the vehicle.

The bill takes effect October 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds or that limit their ability to raise revenue or receive state tax revenue.

Subsection (b) of Article VII, s. 18 of the Florida Constitution provides that, except upon approval by each house of the Legislature by two-thirds vote of its membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate. However, these requirements do not apply to laws that have an insignificant fiscal impact[40] on local governments, which for the Fiscal Year 2019-2020 is forecast at approximately $2.2 million.[41, 42]

While local governments appear to benefit from potential revenue increases as a result of some of the bill's provisions; *e.g.*, the authorized administrative fees charged to vehicle owners and authorized persons, other provisions in the bill prohibit local governments from imposing amounts that may currently be imposed; *e.g.*, requiring local governments to set a maximum fee amount and prohibiting fee collection from authorized wreckers and towing businesses.

The extent to which the potential revenue increases would be offset by the bill's prohibitions against local government imposition of the specified fees, charges, etc., is indeterminate. Thus, the bill may reduce the authority of municipalities or counties to raise revenue. This reduction may be above the "insignificant impact" ceiling and approval of the bill by each house of the Legislature by a two-thirds vote of its members may be required.

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[40] An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times $0.10. *See* Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), *available at:* http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf (last visited Jan. 16, 2020)

[41] FLA. CONST. art. VII, s. 18(d).

[42] Based on the Florida Demographic Estimating Conference's Dec. 3, 2019 population forecast for 2020 of 21,555,986. The conference packet is *available at*: http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf (last visited Jan. 16, 2020).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill contains provisions that may both increase and decrease revenues and expenses for the private sector, as the bill prohibits county and municipal imposition of the identified fees and charges on authorized wrecker operators or towing businesses, replaced by business taxes that businesses are likely already paying and limited administrative fees that such operators and businesses must remit to the county or municipality (when a vehicle or vessel is towed from public property). These revisions would presumably decrease expenses for such operators and businesses, thereby increasing revenue, in indeterminate amounts. The increase would be offset by costs associated with collecting and remitting the limited administrative fees, but only if an operator or business chooses to do so.

Also, Counties and municipalities will have to limit administrative wrecker and towing fees, which are not to exceed 25 percent of the maximum towing rate. This revision would presumably reduce expenses to owners or authorized persons whose vehicles or vessels are towed from public property, in indeterminate amounts.

C. Government Sector Impact:

The bill contains provisions that may both increase and decrease revenues and expenses for local governments. The bill prohibits local governments from imposing the identified fees on authorized wrecker operators or towing businesses, but these fees may still be imposed against the owners of the vehicle and vessel being moved. This revision would presumably reduce revenue to local governments in indeterminate amounts or extend the time it takes for local governments to receive remitted fees from wreckers and towing businesses. The authorized reasonable administrative fee assessed against owners or

authorized persons, limited to 25 percent of the maximum towing rate, presumably would not offset the reduction in local government revenue due to the prohibition.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 125.0103, 166.043, 323.002, 713.78, and 715.07 of the Florida Statutes.

This bill creates sections 125.01047 and 166.04465 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Infrastructure and Security on February 10, 2020:
The committee substitute removes the lienholder of a vehicle or vessel as an entity that may be assessed a charge or fee by a county or city when the vehicle or vessel is towed from public property by a towing business or by an authorized wrecker operator.

CS by Community Affairs on January 21, 2020:
The committee substitute:

- Changes the current requirement that tow-away zone notices are placed within "5 feet" from the "public right-of-way line" to require the notices be placed within "10 feet" from the "road" as defined s. 334.03(22), F.S.;
- Removes proposed changes in the bill about attorney fees in connection with the towing of vehicles or vessels from private property; and
- Provides an effective date of October 1, 2020.

B. Amendments:

None.

By the Committees on Infrastructure and Security; and Community Affairs; and Senator Hooper

596-03407-20 20201332c2

A bill to be entitled

An act relating to towing and immobilizing vehicles and vessels; amending ss. 125.0103 and 166.043, F.S.; authorizing local governments to enact rates to tow or immobilize vessels on private property and to remove and store vessels under specified circumstances; requiring counties to establish maximum rates for such towing, immobilization, removal, and storage of vessels; providing applicability; creating s. 125.01047, F.S.; prohibiting counties from enacting certain ordinances or rules that impose fees or charges on authorized wrecker operators or towing businesses; defining the term "towing business"; providing exceptions; authorizing authorized wrecker operators or towing businesses to impose and collect a certain administrative fee or charge on behalf of the county, subject to certain requirements; providing applicability; providing construction; prohibiting a certain charter county from imposing any new business tax, fee, or charge that was not in effect on a specified date on a towing business or an authorized wrecker operator; providing restrictions and requirements on a certain administrative fee or charge imposed and collected by such charter county; defining the term "charter county"; creating s. 166.04465, F.S.; prohibiting municipalities from enacting certain ordinances or rules that impose fees or charges on authorized wrecker operators or towing businesses; defining the term "towing business"; providing

596-03407-20 20201332c2

exceptions; authorizing authorized wrecker operators or towing businesses to impose and collect a certain administrative fee or charge on behalf of the municipality, subject to certain requirements; amending s. 323.002, F.S.; prohibiting counties or municipalities from adopting or maintaining in effect certain ordinances or rules that impose charges, costs, expenses, fines, fees, or penalties on authorized wrecker operators or registered owners, or other legally authorized persons in control of vehicles or vessels under certain conditions; providing an exception; authorizing authorized wrecker operators or towing businesses to impose and collect a certain administrative fee or charge on behalf of counties or municipalities, subject to certain requirements; prohibiting counties or municipalities from enacting certain ordinances or rules that require authorized wrecker operators to accept a specified form of payment; requiring that a wrecker operator maintain an operable automatic teller machine for use by the public under certain circumstances; providing exceptions; providing applicability; authorizing certain charter counties to impose a charge, cost, expense, fine, fee, or penalty on an authorized wrecker operator in connection with a certain violation; amending s. 713.78, F.S.; authorizing certain persons to place liens on vehicles or vessels to recover specified fees or charges; amending s. 715.07, F.S.; revising requirements regarding notices

and signs concerning the towing or removal of vehicles or vessels; deleting a requirement that a certain receipt be signed; prohibiting counties or municipalities from enacting certain ordinances or rules that require towing businesses to accept a specified form of payment; requiring that a towing business maintain an operable automatic teller machine for use by the public under certain circumstances; providing applicability; providing an effective date.

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

Section 1. Paragraphs (b) and (c) of subsection (1) of section 125.0103, Florida Statutes, are amended to read:

125.0103 Ordinances and rules imposing price controls; findings required; procedures.—

(1)

(b) ~~The provisions of~~ This section does ~~shall~~ not prevent the enactment by local governments of public service rates otherwise authorized by law, including water, sewer, solid waste, public transportation, taxicab, or port rates, rates for towing of vehicles or vessels from or immobilization of vehicles or vessels on private property, or rates for removal and storage of wrecked or disabled vehicles or vessels from an accident scene or the removal and storage of vehicles or vessels in the event the owner or operator is incapacitated, unavailable, leaves the procurement of wrecker service to the law enforcement officer at the scene, or otherwise does not consent to the removal of the vehicle or vessel.

(c) Counties must establish maximum rates that ~~which~~ may be charged on the towing of vehicles or vessels from or immobilization of vehicles or vessels on private property, removal and storage of wrecked or disabled vehicles or vessels from an accident scene, or for the removal and storage of vehicles or vessels~~,~~ in the event the owner or operator is incapacitated, unavailable, leaves the procurement of wrecker service to the law enforcement officer at the scene, or otherwise does not consent to the removal of the vehicle or vessel. However, if a municipality chooses to enact an ordinance establishing the maximum rates ~~fees~~ for the towing or immobilization of vehicles or vessels as described in paragraph (b), the county's ordinance does ~~shall~~ not apply within such municipality.

Section 2. Section 125.01047, Florida Statutes, is created to read:

125.01047 Rules and ordinances relating to towing services.—

(1) A county may not enact an ordinance or rule that would impose a fee or charge on an authorized wrecker operator, as defined in s. 323.002(1), or on a towing business for towing, impounding, or storing a vehicle or vessel. As used in this section, the term "towing business" means a business that provides towing services for monetary gain.

(2) The prohibition set forth in subsection (1) does not affect a county's authority to:

(a) Levy a reasonable business tax under s. 205.0315, s. 205.033, or s. 205.0535.

(b) Impose and collect a reasonable administrative fee or

charge on the registered owner or other legally authorized person in control of a vehicle or vessel, not to exceed 25 percent of the maximum towing rate, to cover the cost of enforcement, including parking enforcement, by the county when the vehicle or vessel is towed from public property. An authorized wrecker operator or towing business may impose and collect the administrative fee or charge on behalf of the county and shall remit such fee or charge to the county only after it is collected.

(3)(a) This section does not apply to a towing or immobilization licensing, regulatory, or enforcement program of a charter county in which at least 90 percent of the population resides in incorporated municipalities, or of a charter county with at least 38 incorporated municipalities within its territorial boundaries as of January 1, 2020. This section does not affect a charter county's authority to:

1. Impose and collect towing operating license fees, license renewal fees, license extension fees, expedite fees, storage site inspection or reinspection fees, criminal background check fees, and tow truck decal fees, including decal renewal fees, expedite fees, and decal replacement fees.

2. Impose and collect immobilization operating license fees, license extension fees, license renewal fees, expedite fees, and criminal background check fees.

3. Set maximum rates for the towing or immobilization of vehicles or vessels on private property, including rates based on different classes of towing vehicles, research fees, administrative fees, storage fees, and labor fees; rates for towing services performed or directed by governmental entities;

road service rates; winch recovery rates; voluntary expediting fees for vehicle or vessel ownership verification; and to establish conditions in connection with the applicability or payment of maximum rates set for towing or immobilization of vehicles or vessels.

4. Impose and collect such other taxes, fees, or charges otherwise authorized by general law, special law, or county ordinance, resolution, or regulation.

(b) A charter county may impose and collect an administrative fee or charge as provided in paragraph (2)(b) but may not impose such fee or charge on a towing business or an authorized wrecker operator. If the charter county imposes such administrative fee or charge, the charter county may authorize a towing business or authorized wrecker operator to impose and collect such fee or charge on behalf of the county, and the towing business or authorized wrecker operator shall remit such fee or charge to the charter county only after it is collected.

(4)(a) Subsection (1) does not apply to a charter county that had a towing licensing, regulatory, or enforcement program in effect on January 1, 2020. However, such charter county may not impose any new business tax, fee, or charge that was not in effect as of January 1, 2020, on a towing business or an authorized wrecker operator.

(b) A charter county may impose and collect an administrative fee or charge as provided in paragraph (2)(b); however, it may not impose that fee or charge upon a towing business or an authorized wrecker operator. If such charter county imposes such administrative fee or charge, such fee or charge must be imposed on the registered owner or other legally

authorized person in control of a vehicle or vessel. The fee or charge may not exceed 25 percent of the maximum towing rate to cover the cost of enforcement, including parking enforcement, by the charter county when the vehicle or vessel is towed from public property. The charter county may authorize an authorized wrecker operator or towing business to impose and collect the administrative fee or charge on behalf of the charter county, and the authorized wrecker operator or towing business shall remit such fee or charge to the charter county only after it is collected.

(c) For purposes of this subsection, the term "charter county" means a county as defined in s. 125.011(1).

Section 3. Paragraphs (b) and (c) of subsection (1) of section 166.043, Florida Statutes, are amended to read:

166.043 Ordinances and rules imposing price controls; findings required; procedures.—

(1)

(b) ~~The provisions of~~ This section does ~~shall~~ not prevent the enactment by local governments of public service rates otherwise authorized by law, including water, sewer, solid waste, public transportation, taxicab, or port rates, rates for towing of vehicles or vessels from or immobilization of vehicles or vessels on private property, or rates for removal and storage of wrecked or disabled vehicles or vessels from an accident scene or the removal and storage of vehicles or vessels in the event the owner or operator is incapacitated, unavailable, leaves the procurement of wrecker service to the law enforcement officer at the scene, or otherwise does not consent to the removal of the vehicle or vessel.

(c) Counties must establish maximum rates that ~~which~~ may be charged on the towing of vehicles or vessels from or immobilization of vehicles or vessels on private property, removal and storage of wrecked or disabled vehicles or vessels from an accident scene, or for the removal and storage of vehicles or vessels~~,~~ in the event the owner or operator is incapacitated, unavailable, leaves the procurement of wrecker service to the law enforcement officer at the scene, or otherwise does not consent to the removal of the vehicle or vessel. However, if a municipality chooses to enact an ordinance establishing the maximum rates ~~fees~~ for the towing or immobilization of vehicles or vessels as described in paragraph (b), the county's ordinance established under s. 125.0103 does ~~shall~~ not apply within such municipality.

Section 4. Section 166.04465, Florida Statutes, is created to read:

166.04465 Rules and ordinances relating to towing services.—

(1) A municipality may not enact an ordinance or rule that would impose a fee or charge on an authorized wrecker operator, as defined in s. 323.002(1), or on a towing business for towing, impounding, or storing a vehicle or vessel. As used in this section, the term "towing business" means a business that provides towing services for monetary gain.

(2) The prohibition set forth in subsection (1) does not affect a municipality's authority to:

(a) Levy a reasonable business tax under s. 205.0315, s. 205.043, or s. 205.0535.

(b) Impose and collect a reasonable administrative fee or

charge on the registered owner or other legally authorized person in control of a vehicle or vessel, not to exceed 25 percent of the maximum towing rate, to cover the cost of enforcement, including parking enforcement, by the municipality when the vehicle or vessel is towed from public property. An authorized wrecker operator or towing business may impose and collect the administrative fee or charge on behalf of the municipality and shall remit such fee or charge to the municipality only after it is collected.

Section 5. Present subsection (4) of section 323.002, Florida Statutes, is redesignated as subsection (6), and new subsections (4) and (5) are added to that section, to read:

323.002 County and municipal wrecker operator systems; penalties for operation outside of system.—

(4)(a) Except as provided in paragraph (b), a county or municipality may not adopt or maintain in effect an ordinance or rule that imposes a charge, cost, expense, fine, fee, or penalty on an authorized wrecker operator, the registered owner, or another legally authorized person in control of a vehicle or vessel when the vehicle or vessel is towed by an authorized wrecker operator under this chapter.

(b) A county or municipality may adopt or maintain an ordinance or rule that imposes a reasonable administrative fee or charge on the registered owner or other legally authorized person in control of a vehicle or vessel that is towed by an authorized wrecker operator, not to exceed 25 percent of the maximum towing rate, to cover the cost of enforcement, including parking enforcement, by the county or municipality when the vehicle or vessel is towed from public property. An authorized

wrecker operator or towing business may impose and collect the administrative fee or charge on behalf of the county or municipality and shall remit such fee or charge to the county or municipality only after it is collected.

(c) A county or municipality may not enact an ordinance or rule that requires an authorized wrecker operator to accept a credit card as a form of payment. However, if an authorized wrecker operator does not accept a credit card, the wrecker operator must maintain an operable automatic teller machine for use by the public at its place of business. This paragraph does not apply to a county or municipality that adopted an ordinance or rule before January 1, 2020, requiring an authorized wrecker operator to accept a credit card as a form of payment.

(5) Subsection (4) does not apply to the towing or immobilization licensing, regulatory, or enforcement program of a charter county described in s. 125.01047(3) or (4). Such charter county may impose a charge, cost, expense, fine, fee, or penalty on an authorized wrecker operator in connection with a violation of the towing or immobilization program requirements as set forth by ordinance, resolution, or regulation.

Section 6. Subsection (2) of section 713.78, Florida Statutes, is amended to read:

713.78 Liens for recovering, towing, or storing vehicles and vessels.—

(2) Whenever a person regularly engaged in the business of transporting vehicles or vessels by wrecker, tow truck, or car carrier recovers, removes, or stores a vehicle or vessel upon instructions from:

(a) The owner thereof;

(b) The owner or lessor, or a person authorized by the owner or lessor, of property on which such vehicle or vessel is wrongfully parked, and the removal is done in compliance with s. 715.07;

(c) The landlord or a person authorized by the landlord, when such motor vehicle or vessel remained on the premises after the tenancy terminated and the removal is done in compliance with s. 83.806 or s. 715.104; or

(d) Any law enforcement agency,

she or he shall have a lien on the vehicle or vessel for a reasonable towing fee, for a reasonable administrative fee or charge imposed by a county or municipality, and for a reasonable storage fee; except that a ~~no~~ storage fee may not ~~shall~~ be charged if the vehicle or vessel is stored for fewer ~~less~~ than 6 hours.

Section 7. Subsection (2) of section 715.07, Florida Statutes, is amended to read:

715.07 Vehicles or vessels parked on private property; towing.—

(2) The owner or lessee of real property, or any person authorized by the owner or lessee, which person may be the designated representative of the condominium association if the real property is a condominium, may cause any vehicle or vessel parked on such property without her or his permission to be removed by a person regularly engaged in the business of towing vehicles or vessels, without liability for the costs of removal, transportation, or storage or damages caused by such removal, transportation, or storage, under any of the following

circumstances:

(a) The towing or removal of any vehicle or vessel from private property without the consent of the registered owner or other legally authorized person in control of that vehicle or vessel is subject to strict compliance with the following conditions and restrictions:

1.a. Any towed or removed vehicle or vessel must be stored at a site within a 10-mile radius of the point of removal in any county of 500,000 population or more, and within a 15-mile radius of the point of removal in any county of fewer ~~less~~ than 500,000 population. That site must be open for the purpose of redemption of vehicles on any day that the person or firm towing such vehicle or vessel is open for towing purposes, from 8:00 a.m. to 6:00 p.m., and, when closed, shall have prominently posted a sign indicating a telephone number where the operator of the site can be reached at all times. Upon receipt of a telephoned request to open the site to redeem a vehicle or vessel, the operator shall return to the site within 1 hour or she or he will be in violation of this section.

b. If no towing business providing such service is located within the area of towing limitations set forth in sub-subparagraph a., the following limitations apply: any towed or removed vehicle or vessel must be stored at a site within a 20-mile radius of the point of removal in any county of 500,000 population or more, and within a 30-mile radius of the point of removal in any county of fewer ~~less~~ than 500,000 population.

2. The person or firm towing or removing the vehicle or vessel shall, within 30 minutes after completion of such towing or removal, notify the municipal police department or, in an

unincorporated area, the sheriff, of such towing or removal, the storage site, the time the vehicle or vessel was towed or removed, and the make, model, color, and license plate number of the vehicle or description and registration number of the vessel and shall obtain the name of the person at that department to whom such information was reported and note that name on the trip record.

3. A person in the process of towing or removing a vehicle or vessel from the premises or parking lot in which the vehicle or vessel is not lawfully parked must stop when a person seeks the return of the vehicle or vessel. The vehicle or vessel must be returned upon the payment of a reasonable service fee of not more than one-half of the posted rate for the towing or removal service as provided in subparagraph 6. The vehicle or vessel may be towed or removed if, after a reasonable opportunity, the owner or legally authorized person in control of the vehicle or vessel is unable to pay the service fee. If the vehicle or vessel is redeemed, a detailed signed receipt must be given to the person redeeming the vehicle or vessel.

4. A person may not pay or accept money or other valuable consideration for the privilege of towing or removing vehicles or vessels from a particular location.

5. Except for property appurtenant to and obviously a part of a single-family residence, and except for instances when notice is personally given to the owner or other legally authorized person in control of the vehicle or vessel that the area in which that vehicle or vessel is parked is reserved or otherwise unavailable for unauthorized vehicles or vessels and that the vehicle or vessel is subject to being removed at the

owner's or operator's expense, any property owner or lessee, or person authorized by the property owner or lessee, before ~~prior to~~ towing or removing any vehicle or vessel from private property without the consent of the owner or other legally authorized person in control of that vehicle or vessel, must post a notice meeting the following requirements:

a. The notice must be prominently placed at each driveway access or curb cut allowing vehicular access to the property, within 10 ~~5~~ feet from the road as defined in s. 334.03(22) ~~public right-of-way line~~. If there are no curbs or access barriers, the signs must be posted not fewer ~~less~~ than one sign for each 25 feet of lot frontage.

b. The notice must clearly indicate, in not fewer ~~less~~ than 2-inch high, light-reflective letters on a contrasting background, that unauthorized vehicles will be towed away at the owner's expense. The words "tow-away zone" must be included on the sign in not fewer ~~less~~ than 4-inch high letters.

c. The notice must also provide the name and current telephone number of the person or firm towing or removing the vehicles or vessels.

d. The sign structure containing the required notices must be permanently installed with the words "tow-away zone" not less than 3 feet and not more than 6 feet above ground level and must be continuously maintained on the property for not fewer ~~less~~ than 24 hours before ~~prior to~~ the towing or removal of any vehicles or vessels.

e. The local government may require permitting and inspection of these signs before ~~prior to~~ any towing or removal of vehicles or vessels being authorized.

f. A business with 20 or fewer parking spaces satisfies the notice requirements of this subparagraph by prominently displaying a sign stating "Reserved Parking for Customers Only Unauthorized Vehicles or Vessels Will be Towed Away At the Owner's Expense" in not less than 4-inch high, light-reflective letters on a contrasting background.

g. A property owner towing or removing vessels from real property must post notice, consistent with the requirements in sub-subparagraphs a.-f., which apply to vehicles, that unauthorized vehicles or vessels will be towed away at the owner's expense.

A business owner or lessee may authorize the removal of a vehicle or vessel by a towing company when the vehicle or vessel is parked in such a manner that restricts the normal operation of business; and if a vehicle or vessel parked on a public right-of-way obstructs access to a private driveway the owner, lessee, or agent may have the vehicle or vessel removed by a towing company upon signing an order that the vehicle or vessel be removed without a posted tow-away zone sign.

6. Any person or firm that tows or removes vehicles or vessels and proposes to require an owner, operator, or person in control or custody of a vehicle or vessel to pay the costs of towing and storage before ~~prior to~~ redemption of the vehicle or vessel must file and keep on record with the local law enforcement agency a complete copy of the current rates to be charged for such services and post at the storage site an identical rate schedule and any written contracts with property owners, lessees, or persons in control of property which

authorize such person or firm to remove vehicles or vessels as provided in this section.

7. Any person or firm towing or removing any vehicles or vessels from private property without the consent of the owner or other legally authorized person in control or custody of the vehicles or vessels shall, on any trucks, wreckers as defined in s. 713.78(1)(c), or other vehicles used in the towing or removal, have the name, address, and telephone number of the company performing such service clearly printed in contrasting colors on the driver and passenger sides of the vehicle. The name shall be in at least 3-inch permanently affixed letters, and the address and telephone number shall be in at least 1-inch permanently affixed letters.

8. Vehicle entry for the purpose of removing the vehicle or vessel shall be allowed with reasonable care on the part of the person or firm towing the vehicle or vessel. Such person or firm shall be liable for any damage occasioned to the vehicle or vessel if such entry is not in accordance with the standard of reasonable care.

9. When a vehicle or vessel has been towed or removed pursuant to this section, it must be released to its owner or person in control or custody ~~custodian~~ within 1 ~~one~~ hour after requested. Any vehicle or vessel owner or person in control or custody has ~~agent shall have~~ the right to inspect the vehicle or vessel before accepting its return, and no release or waiver of any kind which would release the person or firm towing the vehicle or vessel from liability for damages noted by the owner or person in control or custody ~~other legally authorized person~~ at the time of the redemption may be required from any vehicle

or vessel owner or person in control or custody~~, custodian, or agent~~ as a condition of release of the vehicle or vessel to its owner or person in control or custody. A detailed~~, signed~~ receipt showing the legal name of the company or person towing or removing the vehicle or vessel must be given to the person paying towing or storage charges at the time of payment, whether requested or not.

(b) These requirements are minimum standards and do not preclude enactment of additional regulations by any municipality or county including the right to regulate rates when vehicles or vessels are towed from private property, except that a county or municipality may not enact an ordinance or rule that requires a towing business to accept a credit card as a form of payment. However, if a towing business does not accept a credit card, the towing business must maintain an operable automatic teller machine for use by the public at its place of business. This paragraph does not apply to a county or municipality that adopted an ordinance or rule before January 1, 2020, requiring a towing business to accept a credit card as a form of payment.

Section 8. This act shall take effect October 1, 2020.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ED HOOPER
16th District

COMMITTEES:
Governmental Oversight and Accountability, Chair
Appropriations Subcommittee on Agriculture, Environment, and General Government
Appropriations Subcommittee on Health and Human Services
Health Policy
Infrastructure and Security
Joint Select Committee on Collective Bargaining, Alternating Chair
Joint Administrative Procedures Committee

February 11th, 2020

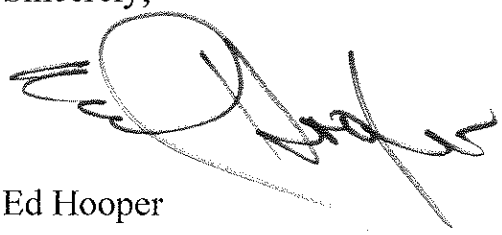
Honorable Lizbeth Benacquisto, Chair
Committee on Rules
402 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Benacquisto,

I am writing to request that SB 1332, Towing and Immobilizing Vehicles and Vessels, be placed on the agenda to be heard in the Rules Committee.

I appreciate your consideration in this matter.

Sincerely,



Ed Hooper

Cc: Staff Director, John B. Phelps
Administrative Assistant, Cynthia Futch

REPLY TO:
☐ 3450 East Lake Road, Suite 305, Palm Harbor, Florida 34685-2411 (727) 771-2102
☐ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

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

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/19/2020
Meeting Date

SB 1332
Bill Number (if applicable)

Topic Towing and Immobilizing Vehicles and Vessels

Amendment Barcode (if applicable)

Name Candice Ericks

Job Title

Address 205 S. Adams St.
Street

Phone 954-648-1204

Tallahassee FL 32301
City *State* *Zip*

Email Candice@ericksconsultants.con

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Broward and Palm Beach Counties

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/19
Meeting Date

1332
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Towing

Name Jose Diaz

Job Title

Address 108 E Jefferson St
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-681-0254

Email jdiazjr@aol.com

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

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

Representing Professional Wrecker Operators of Florida

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

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

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 538
INTRODUCER:	Community Affairs Committee; Infrastructure and Security Committee; and Senator Diaz and others
SUBJECT:	Emergency Reporting
DATE:	February 17, 2020 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Proctor	Miller	IS	**Fav/CS**
2.	Toman	Ryon	CA	**Fav/CS**
3.	Proctor	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 538 directs the State Watch Office (SWO) to create and maintain a list of emergency-related reportable incidents. The list must include, but is not limited to the following:

- Major fire incidents;
- Search and rescue operations;
- Bomb threats;
- Natural hazards and severe weather;
- Public health and population protective actions;
- Animal or agricultural events;
- Environmental concerns;
- Nuclear power plant events;
- Major transportation events;
- Major utility or infrastructure events; and
- Certain military events.

Political subdivisions must notify the SWO of incidents occurring within their geographic boundaries. The SWO may develop guidelines for reporting and must annually provide the list of reportable incidents to political subdivisions.

II. Present Situation:

The SWO[1] is located in the State Emergency Operations Center in Tallahassee, FL, and is staffed by the Division of Emergency Management (DEM) Operations Officers. The SWO is Florida's official State Warning Point with the Federal Emergency Management Agency, and maintains communication systems and warning capabilities to ensure that the state's population and emergency management agencies are warned of developing emergency situations and can communicate emergency response decisions.[2,3]

The SWO is staffed 24 hours a day, 7 days a week, and its primary purpose is to record, analyze and share information with local, county, state and federal partners to aid in their appropriate response. The SWO is not a dispatch center but a clearinghouse of information to be shared with other government entities who can independently act within their own agency authority and protocols.[4] DEM's mission is to provide members of the State Emergency Response Team with the most accurate information available relating to ongoing or impending hazardous situations throughout the State and region.[5]

The SWO also maintains a direct relationship with the Florida Fusion Center,[6] which allows both emergency management and law enforcement officials to have the most complete and up-to-date intelligence available to better serve citizens, businesses, and visitors.[7]

The SWO tracks between 8,000 and 9,000 incidents a year.[8] They include simple fuel spills, radiological emergencies, damages from severe weather, and rocket launches from Cape Canaveral.

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[1] Section 14.2016(2), F.S., establishes the State Watch Office within the Division of Emergency Management.
[2] Section 252.35, F.S.
[3] Florida Division of Emergency Management, *State Watch Office Guide for Florida County Warning Points and PSAPs* (Published June 2015), available at https://www.floridadisaster.org/globalassets/dem/response/operations/state-watch-office-reportable-incidents-list.pdf (last visited Jan. 30, 2020).
[4] Florida Division of Emergency Management, *State Watch Office Incident Reporting Guidelines* (Aug. 2011), available at https://www.floridadisaster.org/globalassets/importedpdfs/swo-reporting-guidelines-2011.pdf (last visited Jan. 30, 2020).
[5] *Supra*, note 2.
[6] The Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, 118 Stat. 3638 (Dec. 17, 2004), provided guidance on the need for each state to designate a single fusion center to serve as a hub for information sharing, access and collaboration at all levels. The Florida Fusion Center is housed within the Florida Department of Law Enforcement with a mission to protect citizens, visitors, resources, and critical infrastructure of Florida by gathering, processing, analyzing, and disseminating of terrorism, law enforcement, and homeland security information for all local, state, and federal agencies in accordance with Florida's Domestic Security Strategy.
[7] *Supra*, note 2.
[8] Florida Division of Emergency Management, *Program Spotlight: The Florida State Watch Office*, available at https://floridagetaplan.wordpress.com/2015/07/17/program-spotlight-the-florida-state-watch-office/ (last visited Jan. 30, 2020).

A list of potential hazards that are reported to and monitored by the SWO are provided in the table below.[9]

Natural Hazards	Technological Hazards
• Hurricanes • Tornadoes • Flooding • Wildfires • Severe Thunderstorms • Severe Hot and Cold • Earthquakes	• Terrorism • Mass Migration • Radiological Incidents • Hazardous Materials • Special Events (i.e. 2012 Republican National Convention, Super Bowl) • Transportation Accidents (i.e. rail, aircraft, motor vehicle, marine) • Law Enforcement Incidents

The information for these incidents is generally given to the SWO from a county Public Safety Answering Point,[10] and sometimes from the general public. The collected information is logged into an incident tracking system and then disseminated to local, state, tribal, federal, and private partners to aid in their response actions.[11]

Political subdivisions, defined as "a county or municipality created pursuant to law" in ch. 252, F.S., currently have no statutory direction on informing the state about localized emergency events or incidents in their jurisdiction(s). However, local governments currently share information regularly with the SWO regarding natural and technological hazards, so that the SWO is consistently provided with incident reports from across the state.[12] Currently, only wastewater and chemical spills are required by law to be reported to the SWO.[13]

III. Effect of Proposed Changes:

The bill creates s. 252.351, F.S., to require mandatory reporting of certain incidents by political subdivisions (i.e., counties and municipalities) to the State Watch Office (SWO). The bill provides that:

- The SWO must create and maintain a list of emergency-related reportable incidents. The list must include but is not limited to (additional information clarifying the meaning of each incident is provided in the bill):
  - Major fire incidents;
  - Search and rescue operations;

[9] *Id.*
[10] DATA.GOV, *Public Safety Answering Point (PSAP) 911 Service Area Boundaries*, available at https://catalog.data.gov/dataset/public-safety-answering-point-psap-911-service-area-boundaries (last visited Jan. 30, 2020), defines a Public Safety Answering Point as a facility equipped and staffed to receive 9-1-1 calls.
[11] *Supra*, note 7.
[12] Division of Emergency Management, *FDEM Legislative Priorities 2019-2020 (Fla. Stat. § 252)* (on file with the Senate Committee on Infrastructure and Security).
[13] Section 403.077(2), F.S., see also Chapter 62-620, F.A.C.

  - Bomb threats;
  - Natural hazards and severe weather;
  - Public health and population protective actions;
  - Animal or agricultural events;
  - Environmental concerns;
  - Nuclear power plant events;
  - Major transportation events;
  - Major utility or infrastructure events;
  - Certain military events.
- As soon as practicable following its initial response to an incident, a political subdivision must provide notification to the SWO of an incident specified on the list which occur within its geographic boundaries;
- The SWO may establish guidelines specifying the method and format a political subdivision must use when annually reporting an incident.
- Beginning December 1, 2020, and by December 1 every year thereafter, the SWO must provide the list of reportable incidents to each political subdivision.

The bill takes effect on July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, subsection (a) of section 18 of the State Constitution provides that cities and counties are not bound by general laws requiring them to spend funds or take action that requires the expenditure of funds unless certain specified exemptions or exceptions are met.

Under the bill, cities and counties may incur costs relating to reporting of certain incidents. However, the mandate requirements do not apply to laws having an insignificant impact, which, for fiscal year 2020-2021, is forecast at slightly over $2.1 million.[14,15,16] The impact of the bill on cities and counties is indeterminate, but likely nominal.

If such costs are determined to exceed $2.1 million in the aggregate, the bill may be binding on cities and counties if the bill contains a finding of important state interest and meets one of the exceptions specified in the State Constitution (e.g., provision of funding or a funding mechanism or enactment by vote of two-thirds of the membership of each house).

[14] Fla. Const. art. VII, s. 18(d).
[15] An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times $0.10. See Florida Senate Committee on Community Affairs, Interim Report 2012-115: Insignificant Impact, (Sept. 2011), available at http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf (last visited Jan. 30, 2020).
[16] Based on the Florida Demographic Estimating Conference's December 3, 2019, population forecast for 2020 of 21,555,986. The conference packet is available at http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf (last visited Jan. 30, 2020).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There may be an insignificant negative fiscal impact to local governments for implementation of the bill. With the exception of wastewater and chemical spills,[17] counties and municipalities have no statutory direction on informing the state about localized emergency events or incidents in their jurisdiction(s). However, local governments currently share information regularly with the SWO regarding natural and technological hazards, so that the SWO is consistently provided with incident reports from across the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following section of the Florida Statutes: 252.351.

[17] *Supra,* note 12.

IX. Additional Information:

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

CS/CS by Community Affairs on February 10, 2020:
The committee substitute:

- Specifies, but does not limit, a list of 11 emergency-related reportable incidents that the State Watch Office must create and maintain and annually provide to counties and municipalities.
- Removes a requirement that the Speaker of the House of Representatives and the President of the Senate must annually receive the list of reportable incidents.

CS by Infrastructure and Security on January 21, 2020:
The committee substitute:

- Requires the DEM to annually provide the State Watch Office Reportable Incidents List to county and municipal emergency managers, the Speaker of the House of Representatives, and the President of the Senate; and
- Requires the DEM to maintain the State Watch Office Reportable Incidents List, and shall annually notify county and municipal emergency managers, the Speaker of the House of Representatives, and the President of the Senate when the list is amended by the division director.

B. Amendments:

None.

By the Committees on Community Affairs; and Infrastructure and Security; and Senators Diaz, Book, Pizzo, and Perry

578-03431-20 2020538c2

A bill to be entitled

An act relating to emergency reporting; creating s. 252.351, F.S.; defining the term "office"; requiring the State Watch Office within the Division of Emergency Management to create a list of reportable incidents; requiring a political subdivision to report incidents contained on the list to the office; authorizing the office to establish guidelines a political subdivision must follow to report an incident; requiring the office to annually provide the list of reportable incidents to each political subdivision; providing an effective date.

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

Section 1. Section 252.351, Florida Statutes, is created to read:

252.351 Mandatory reporting of certain incidents by political subdivisions.—

(1) For purposes of this section, the term "office" means the State Watch Office established within the division pursuant to s. 14.2016.

(2) The office, to aid in its mission of serving as a clearinghouse for emergency-related information across all levels of government, shall create and maintain a list of reportable incidents. The list must include, but is not limited to, the following events:

(a) Major fires, including wildfires, commercial or multiunit residential fires, and industrial fires.

578-03431-20 2020538c2

(b) Search and rescue operations, including structure collapse or urban search and rescue response.

(c) Bomb threats or threats to inflict harm on a large number of people or significant infrastructure, a suspicious device, or device detonation.

(d) Natural hazards and severe weather, including earthquakes, landslides, or ground subsidence or sinkholes.

(e) Public health and population protective actions, including public health hazards, evacuation orders, or emergency shelter openings.

(f) Animal or agricultural events, including suspected or confirmed animal disease, suspected or confirmed agricultural disease, crop failure, or food supply contamination.

(g) Environmental concerns, including an incident of reportable pollution release as required in s. 403.077(2).

(h) Nuclear power plant events, including events in process or that have occurred that indicate a potential degradation of the level of safety of the plant or that indicate a security threat to facility protection.

(i) Major transportation events, including aircraft or airport incidents, passenger or commercial railroad incidents, major road or bridge closures, or marine incidents involving a blocked navigable channel of a major waterway.

(j) Major utility or infrastructure events, including dam failure or overtopping, drinking water facility breach, or major utility outages or disruptions involving transmission lines or substations.

(k) Military events, when information regarding such activity is provided to a political subdivision.

(3) As soon as practicable following its initial response to an incident, a political subdivision shall provide notification to the office that an incident specified on the list of reportable incidents has occurred within its geographical boundaries. The office may establish guidelines specifying the method and format a political subdivision must use when reporting an incident.

(4) Beginning December 1, 2020, and by December 1 every year thereafter, the office must provide the list of reportable incidents to each political subdivision.

Section 2. This act shall take effect July 1, 2020.

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 14, 2020

I respectfully request that **Senate Bill # 538**, relating to Emergency Reporting, be placed on the:

☐ Committee agenda at your earliest possible convenience.

☒ Next committee agenda.

Senator Manny Diaz, Jr.
Florida Senate, District 36

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/19/20
Meeting Date

538
Bill Number (if applicable)

Topic Emergency Reporting

Amendment Barcode (if applicable)

Name JARED ROSENSTEIN

Job Title Legislative Affairs Dir

Address 2555 Shumard Oak Blvd
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 786-247-8716

Email Jared.Rosenstein@em.myflorida.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FDEM

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 1084
INTRODUCER:	Senators Diaz and Montford
SUBJECT:	Emotional Support Animals
DATE:	February 17, 2020 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Becker	Becker	AG	**Favorable**
2.	Kraemer	Imhof	IT	**Favorable**
3.	Becker	Phelps	RC	**Favorable**

I. Summary:

SB 1084 prohibits a landlord, to the extent required by federal law, rule, or regulation, to deny housing to a person with a disability or a disability-related need who has an animal that is required as support. It defines emotional support animal as an animal that is not required to be trained to assist a person with a disability but, by virtue of its presence, provides support to alleviate one or more identified symptoms or effects of a person's disability.

The bill prohibits a landlord from charging a person with an emotional support animal additional fees. It does allow a landlord to prohibit the animal if it poses a direct threat to the safety, health, or property of others and to request certain written documentation prepared by a health care practitioner[1] in a format prescribed in rule by the Department of Health. The documentation may not be prepared by a health care practitioner whose exclusive service is to prepare documentation in exchange for a fee. The landlord may also require proof of compliance with state and local licensing and vaccination requirements.

Under the bill, a person who falsifies written documentation or knowingly or willfully misrepresents the use of an emotional support animal commits a misdemeanor of the second degree, which could result in incarceration for 60 days, a fine of $500, or both. The bill requires such person to perform 30 hours of community service for an organization that serves individual with disabilities. It makes an emotional support animal's owner liable for any damages caused by the animal and removes landlord liability for damage done by an authorized emotional support

[1] Section 456.001(4), F.S., defines the term "health care practitioner" to include persons licensed or certified as an acupuncturist, physician, osteopathic physician, chiropractor, podiatric physician, naturopathic practitioner, optometrist, registered and certified nurse, pharmacist, dentist, dental hygienist, midwife, speech and language pathologist, audiologist, nursing home administrator, occupational therapist, respiratory therapist, dietetics and nutrition practitioner, athletic trainer, orthoptist, prosthetist, electrologist, massage therapist, clinical laboratory scientist and personnel, medical physicist, optician, physical therapist, psychologist, hypnotist, sex therapist, clinical social worker, marriage and family therapist, and mental health counselor.

animal. The bill expressly states that the guidelines for emotional support animals do not apply to service animals.

The bill provides an effective date of July 1, 2020.

II. Present Situation:

Americans with Disabilities Act

The Americans with Disabilities Act (ADA)[2] prohibits discrimination against individuals with disabilities[3] in employment,[4] in the provision of public services,[5] and in public accommodation.[6] One of the requirements of the ADA is that public accommodation or public entity provide reasonable accommodations to disabled individuals accompanied by a service animal in all areas that are open to the public.[7]

A "service animal" is defined as a dog that is individually trained to do work or perform tasks for an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.[8] The work or tasks performed by a service dog must be directly related to the individual's disability.[9] Emotional support, comfort, and companionship provided by a dog, even for therapeutic or medical purposes, are insufficient to classify it as a service animal.[10]

Service dogs must be harnessed or leashed, unless doing so interferes with the dog's work or the individual's disability prevents doing so.[11] A person with a disability cannot be asked to remove his or her service dog from the premises, unless it is out of control and the dog's handler does not take action to control it, or if the dog is not housebroken.[12] However, if the dog is removed under such circumstances, the public accommodation or public entity must still allow the individual with a disability the opportunity to remain on the premises of the public accommodation or public entity without the service dog.[13]

Generally, when it is clear that a dog is trained to do work or perform tasks (such as a guide dog), a public accommodation or public entity may not ask about the necessity of the service dog. If it is not obvious what service or task the dog is providing, extremely limited questions are allowed: staff may only ask if a service dog is required because of a disability, and what tasks the

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[2] 42 U.S.C. s. 12101 *et seq.*
[3] Under the ADA, a disability is broadly defined to mean a physical or mental impairment that substantially limits the major life activities of an individual. 42 U.S.C. s. 12102(1)(a).
[4] 42 U.S.C. s. 12112.
[5] 42 U.S.C. s. 12132.
[6] 42 U.S.C. s. 12182. Under the ADA, a "public entity" includes any state or local government, any department or agency of state or local government, and certain commuter authorities. *See* 42 U.S.C. s. 12131.
[7] 28 C.F.R. ss. 36.302(a) and (c)(7) and 35.136(a) and (g).
[8] 28 C.F.R. ss. 35.104 and 36.104.
[9] *Id.*
[10] *Id.*; ADA National Network, *Service Animals and Emotional Support Animals: Where are they allowed and under what conditions?* 3 (2014), *available at* http://adata.org/sites/adata.org/files/files/Service_Animal_Booklet_2014(1).pdf (last visited Jan. 28, 2020).
[11] 28 C.F.R. ss. 35.136(d) and 36.302(c)(4).
[12] 28 C.F.R. ss. 35.136(b) and 36.302(c)(2).
[13] 28 C.F.R. ss. 35.136(c) and 36.302(c)(3).

dog has been trained to perform.[14] Any other questions, including the nature and extent of the person's disability or medical documentation, are prohibited.[15]

Although the definition of a service animal is limited to dogs, the ADA contains an additional provision related to miniature horses that have been individually trained to work or perform tasks for people with disabilities.[16] Miniatures horses are an alternative service animal for individuals with disabilities who may be allergic to dogs; miniature horses also have life spans considerably longer than dogs and are generally stronger than most dogs.[17] Similar to the requirements for service dogs, public accommodations and public entities must permit the use of a miniature horse by a person with a disability where reasonable. In determining whether permitting a miniature horse is reasonable, a facility must consider four factors: whether the miniature horse is housebroken; whether the miniature horse is under the owner's control; whether the facility can accommodate the miniature horse's type, size, and weight; and whether the miniature horse's presence will compromise safety requirements.[18]

If a public accommodation or public entity violates the ADA, a private party may file suit to obtain a court order to stop the violation. No monetary damages will be available in such suits; however, reasonable attorney's fee may be awarded.[19] Individuals may also file complaints with the U.S. Attorney General, who is authorized to file lawsuits in cases of general public importance or where a "pattern or practice" of discrimination is alleged. In suits by the Attorney General, monetary damages and civil penalties may be awarded. Civil penalties may not exceed $50,000 for a first violation or $100,000 for any subsequent violation.[20]

Fair Housing Act

The federal Fair Housing Act (federal FHA)[21] prohibits discrimination against a person with a disability in the sale or rental of housing.[22] Similar to the ADA, the federal FHA also requires a landlord to provide reasonable accommodations, including permitting the use of service animals, to a person with a disability.[23] However, unlike the ADA which does not require reasonable accommodations for emotional support animals, accommodation of untrained emotional support animals may be required under the federal FHA, if such an accommodation is reasonably

[14] 28 C.F.R. ss. 35.136(f) and 36.302(c)(6).
[15] *Id.*
[16] 28 C.F.R. ss. 35.136(i) and 36.302(c)(9). Miniature horses generally range in height from 2 to 3 feet to the shoulders and weigh between 70 and 100 pounds. U.S. Dep't of Justice, Civil Rights Division, *Service Animals*, 3 (July 2011), *available at* http://www.ada.gov/service_animals_2010.pdf (last visited Jan. 28, 2020).
[17] U.S. Dep't. of Justice, *Americans with Disabilities Act Title III Regulations: Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities*, 96 (Sept. 15, 2010) *available at* http://www.ada.gov/regs2010/titleIII_2010/titleIII_2010_regulations.pdf (last visited Jan. 28, 2020).
[18] 28 C.F.R. ss. 35.136(i) and 36.302(c)(9)ii.
[19] 42 U.S.C. ss. 12188 and 2000a-3.
[20] 42 U.S.C. s. 12188.
[21] 42 U.S.C. s. 3601 *et seq.*
[22] 42 U.S.C. s. 3604(f).
[23] *Id.*; 24 C.F.R. s. 5.303.

necessary to allow a person with a handicap an equal opportunity to enjoy and use housing.[24] A reasonable accommodation may include waiving a no-pet rule or a pet deposit.[25]

A landlord may not ask about the existence, nature, and extent of a person's disability. However, an individual with a disability who requests a reasonable accommodation may be asked to provide documentation for proper review of the accommodation request. A landlord may ask a person to certify, in writing, that the tenant or a member of his or her family is a person with a disability; the need for the animal to assist the person with that specific disability; and that the animal actually assists the person with a disability.[26]

The United States Department of Housing and Urban Development (HUD) recently released guidance dated January 28, 2020 clarifying how housing providers can comply with the FHA when assessing a person's request to have an animal as a reasonable accommodation.[27]

Florida Service Animal Law

Section 413.08, F.S., is Florida's companion to the ADA and federal FHA provisions regarding service animals.

Section 413.08, F.S., provides that an individual with a disability is entitled to equal access in public accommodations,[28] public employment,[29] and housing.[30] An "individual with a disability" means a person who has a physical or mental impairment that substantially limits one or more major life activities of the individual.[31]

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[24] Pet Ownership for the Elderly and Persons With Disabilities, 73 Fed. Reg. 63834, 63836 (Oct. 27, 2008); *see, Fair Housing of the Dakotas, Inc. v. Goldmark Prop. Mgmt., Inc.*, 778 F. Supp. 2d 1028, 1036 (D.N.D. 2011) (finding that "the FHA encompasses all types of assistance animals regardless of training . . . ."); *Overlook Mut. Homes, Inc. v. Spencer*, 666 F. Supp. 2d 850, 859 (S.D. Ohio 2009).

[25] *See* 24 C.F.R. s. 100.204 (Example (1)); *Intermountain Fair Housing Council v. CVE Falls Park, L.L.C.*, 2011 WL 2945824 (D. Idaho 2011); *Bronk v. Ineichen*, 54 F. 3d 425, 429 (7th Cir. 1995).

[26] 73 Fed. Reg. 63834.

[27] *See* HUD's press release (HUD No. 20-013) relating to the guidance at https://www.hud.gov/press/press_releases_media_advisories/HUD_No_20_013 (last visited Jan. 30, 2020) and HUD's Office of Fair Housing and Equal Opportunity notice (FHEO-2020-01) at https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf (last visited Jan. 30, 2020). In FHEO-2020-01), the two sections of the notice are explained as follows. "The first [section], "Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act," recommends a set of best practices for complying with the FHA when assessing accommodation requests involving animals to assist housing providers and help them avoid violations of the FHA. The second section to the notice, "Guidance on Documenting an Individual's Need for Assistance Animals in Housing," provides guidance on information that an individual seeking a reasonable accommodation for an assistance animal may need to provide to a housing provider about his or her disability-related need for the requested accommodation, including supporting information from a health care professional." *Id*. at p. 2.

[28] Section 413.08(1)(c), F.S., defines a "public accommodation" to means "a common carrier, airplane, motor vehicle, railroad train, motor bus, streetcar, boat, or other public conveyance or mode of transportation; hotel; a timeshare that is a transient public lodging […]; lodging place; place of public accommodation, amusement, or resort; and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons. The term does not include air carriers…."

[29] Sections 413.08(5) and (7), F.S.

[30] Section 413.08(6), F.S.

[31] Section 413.08(1)(b), F.S.

Under s. 413.08, F.S., an individual with a disability has the right to be accompanied by a trained service animal in all areas of public accommodations that the public is normally allowed to occupy.[32] Section 413.08, F.S., requires a public accommodation to modify its policies, practices, and procedures to permit use of a service animal by an individual with a disability. However, the public accommodation is not required to modify or provide any vehicle, premises, facility, or service to a higher degree of accommodation than is required for a non-disabled person.

Section 413.08(1)(d), F.S., in part, defines "service animal" to mean "an animal that is trained to perform tasks for an individual with a disability." Respecting access to or enjoyment of public accommodations, the term "service animal" is limited to mean a dog or miniature horse. The term "service animal" is not limited to a dog or miniature horse in the context of an employment-related accommodation.

Similar to the ADA, s. 413.08, F.S., provides that documentation that a service animal is trained is not a precondition for providing service, though a public accommodation may ask if an animal is a service animal required because of a disability and what tasks it is trained to perform.[33] Additionally, a public accommodation:

- May not ask about the nature or extent of a disability;[34]
- May require the service animal to be under the control of its handler and have a harness, leash, or other tether;[35]
- May not impose a deposit or surcharge on an individual with a disability as a precondition to providing service to one accompanied by a service animal, even if a deposit is routinely required for pets;[36]
- May hold an individual with a disability liable for damage caused by a service animal if it is the regular policy and practice of the public accommodation to charge nondisabled persons for damages caused by their pets;[37]
- Is not required to provide care or food or a special location for the service animal or assistance with removing animal excrement;[38] and
- May exclude or remove a service animal from the premises if the animal is out of control and the animal's handler does not take effective action to control it, the animal is not housebroken, or the animal's behavior poses a direct threat to the health and safety of others.[39]

Like the federal FHA, under s. 413.08, F.S., an individual with a disability is entitled to rent or purchase any housing accommodations subject to the same conditions that are applicable to everyone.[40] An individual with a disability who has a service animal is entitled to full and equal

[32] Sections 413.08(3), F.S.
[33] Sections 413.08(3)(b), F.S.
[34] *Id.*
[35] Sections 413.08(3)(a), F.S.
[36] Sections 413.08(3)(c), F.S.
[37] Sections 413.08(3)(d), F.S.
[38] Sections 413.08(3)(e), F.S.
[39] Sections 413.08(3)(f), F.S., which also provides allergies and fear of animals are not valid reasons for denying access or refusing service to an individual with a service animal. Further, if a service animal is excluded or removed for being a direct threat to others, the public accommodation must provide the individual access to the public accommodation without the service animal.
[40] Sections 413.08(6), F.S.

access to all housing accommodations, and may not be required to pay extra compensation for the service animal.[41]

Section 413.08(9), F.S., provides that any person who denies or interferes with the rights of a person with a disability or an individual training a service animal commits a second-degree misdemeanor.[42]

Emotional Support Animals

According to the United States Department of Housing and Urban Development (HUD),[43] an emotional support animal (ESA) is not a pet, but includes any animal providing emotional support to a person with a disability.[44] Unlike a service animal, an ESA is not trained to work or perform certain tasks, but provides emotional support alleviating one or more symptoms or effects of a person's disability.[45] The most common type of ESA is a dog; however, other species of animals may be an ESA.

According to HUD, "ESAs provide very private functions for persons with mental and emotional disabilities. Specifically, ESAs by their very nature and without training, may relieve depression and anxiety, and help reduce stress-induced pain in persons with certain medical conditions affected by stress."[46]

ESAs provide therapeutic support to relieve symptoms of psychiatric disabilities, including depression, anxiety, and post-traumatic stress disorder.[47]

III. Effect of Proposed Changes:

Section 1 creates s. 760.27, F.S., to amend Florida's Fair Housing Act[48] to prohibit discrimination in the rental of a dwelling to persons with a disability who use an emotional support animal (ESA).

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[41] Sections 413.08(6)(b), F.S. Proof of compliance with vaccination requirements may be requested by certain housing accommodations. *Id*.

[42] Section 775.082, F.S., provides that a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S. provides that a misdemeanor of the second degree is punishable by a fine not to exceed $500.

[43] HUD is the Federal agency responsible for national policy and programs addressing America's housing needs, improving and developing the nation's communities, and enforcing fair housing laws, including violations of the Fair Housing Act. HUD.GOV, *Questions and Answers about HUD,* https://www.hud.gov/about/qaintro (last visited Jan. 28, 2020).

[44] U.S. Department of Housing and Urban Development, *FEHO Notice: FHEO-2013-01,* (Apr. 25, 2013), https://archives.hud.gov/news/2013/servanimals_ntcfheo2013-01.pdf (last visited Jan. 28, 2020).

[45] *Id.*

[46] *Id.*

[47] Brazelon Center for Mental Health Law, *Right to Emotional Support Animals in "No Pet" Housing*, (Jun. 16, 2017), http://www.bazelon.org/wp-content/uploads/2017/04/2017-06-16-Emotional-Support-Animal-Fact-Sheet-for-Website-final.pdf (last visited Jan. 28, 2020).

[48] Florida's Fair Housing Act (ss. 760.20 through 760.37, F.S.) is patterned after the federal FHA. *See Bhogaita v. Altamonte Heights Condo. Ass'n*, 765 F.3d 1277, 1285 (11th Cir. 2014) ("The [federal] FHA and the Florida Fair Housing Act are substantively identical, and therefore the same legal analysis applies to each.").

The bill defines the term:

- "Emotional support animal" as an animal that does not require training to do specific work or perform special tasks for a person with a disability but, by virtue of its presence, provides support to alleviate one or more identified symptoms or effects of a person's disability.
- "Landlord" as the owner or lessor of a dwelling.

Under the bill, a landlord, to the extent required by federal law, rule, or regulation, may not:

- Discriminate in the rental of a dwelling to a person with a disability or a disability-related need for an ESA; and
- Charge additional fees to a person with an ESA.

The bill allows a landlord to:

- Prohibit an ESA if the animal poses a direct threat to the safety, health, or property of others which cannot be reduced or eliminated by another reasonable accommodation;
- Request additional information, prepared by a health care practitioner, regarding each emotional support animal when a person's disability or disability-related need is not apparent. The requested documentation must verify that the renter has a disability or a disability-related need, has been under the practitioner's care or treatment for such disability or need, and the animal provides support to alleviate one or more identified symptoms or effects of the person's disability or disability-related need. If more than one animal is to be kept in the dwelling, the documentation must establish the need for each animal. The documentation must be prepared by a health care practitioner, as defined in s. 456.001, F.S.,[49] in a format prescribed by the Department of Health. The documentation may not be prepared by a health care practitioner whose exclusive service is to prepare documentation in exchange for a fee. The Department of Health must establish the format a health care practitioner must follow when providing documentation to a patient and must adopt rules relating to the ESA documentation requirements; and
- Require proof of compliance with state and local licensing and vaccination requirements.

A person who falsifies written documentation for an ESA or knowingly or willfully misrepresents being qualified to use an emotional support animal commits a misdemeanor of the second degree, which could result in incarceration for 60 days, a fine of $500, or both.[50] The person must also perform 30 hours of community service for an organization that serves individuals with disabilities or for another entity or organization at the discretion of the court, to be completed within six months after conviction.

Under the bill, an ESA's owner is liable for any damages caused by the animal and the landlord is not liable for damage done by an ESA that is authorized as a reasonable accommodation under

[49] Section 456.001(4), F.S., defines the term "health care practitioner" to include persons licensed or certified as an acupuncturist, physician, osteopathic physician, chiropractor, podiatric physician, naturopathic practitioner, optometrist, registered and certified nurse, pharmacist, dentist, dental hygienist, midwife, speech and language pathologist, audiologist, nursing home administrator, occupational therapist, respiratory therapist, dietetics and nutrition practitioner, athletic trainer, orthoptist, prosthetist, electrologist, massage therapist, clinical laboratory scientist and personnel, medical physicist, optician, physical therapist, psychologist, hypnotist, sex therapist, clinical social worker, marriage and family therapist, and mental health counselor.

[50] *See*, ss. 775.082 and 775.083, F.S., for the penalties applicable to a second degree misdemeanor.

this section, the federal FHA, s. 504 of the Rehabilitation Act of 1973,[51] or any other federal, state, or local law.

The bill expressly provides that the guidelines for ESAs do not apply to service animals.

Section 2 amends s. 413.08, F.S., to make technical and clarifying changes.

Section 3 amends s. 419.001, F.S., to make conform terminology to changes made by the bill. It also replaces a reference to "handicap" with "disability."

Section 4 amends s. 760.22, F.S., to replace the term "handicap" with the term "disability."

Section 5 amends s. 760.23, F.S., to replace the term "handicap" with the term "disability." It also replaces the term "handicapped person" with the term "person with a disability."

Section 6 amends s. 760.24, F.S., to replace the term "handicap" with the term "disability."

Section 7 amends s. 760.25, F.S., to replace the term "handicap" with the term "disability."

Section 8 amends s. 760.29, F.S., to include s. 760.27, F.S., created by the bill, in the list of exemptions under the Fair Housing Act. It also replaces the term "handicap" with the term "disability."

Section 9 amends s. 760.31, F.S., to replace the term "handicapped" with the term "for persons with disabilities."

Section 10 provides an effective date of July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

[51] Section 504 of the 1973 Rehabilitation Act (Pub. L. 93–112, title V, s. 504) prohibits discrimination against people with disabilities in programs that receive federal financial assistance. This act and subsequent amendments are codified in 29 U.S.C. s. 794, relating to nondiscrimination under federal grants and programs.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If requested by a landlord, a renter of a dwelling who has a disability or a disability-related need who has one or more ESAs may be required pay for written documentation that uses the specified DOH form, prepared by a health care practitioner that has cared for or treated the renter for such disability or need. This may create a barrier to renters who do not have the means to access and be cared for or treated by such a health care practitioner, or to obtain the documentation in the specified DOH format.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

SB 1084 provides that a landlord may request additional information regarding each emotional support animal when a person's disability or disability-related need is not apparent. The requested documentation must be issued by a health care practitioner as defined in s. 456.001, F.S., which results in an extensive list of eligible health care practitioners authorized to issue such documentation.

Section 456.001(4), F.S., defines the term "health care practitioner" to include persons licensed or certified under 19 practice acts, which cover persons licensed or certified as an acupuncturist, physician, osteopathic physician, chiropractor, podiatric physician, naturopathic practitioner, optometrist, registered and certified nurse, pharmacist, dentist, dental hygienist, midwife, speech and language pathologist, audiologist, nursing home administrator, occupational therapist, respiratory therapist, dietetics and nutrition practitioner, athletic trainer, orthoptist, prosthetist, electrologist, massage therapist, clinical laboratory scientist and personnel, medical physicist, optician, physical therapist, psychologist, hypnotist, sex therapist, clinical social worker, marriage and family therapist, and mental health counselor.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 413.08, 419.001, 760.22, 760.23, 760.24, 760.25, 760.29, and 760.31.

This bill creates section 760.27 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Diaz

36-00536B-20 20201084__

A bill to be entitled

An act relating to emotional support animals; creating s. 760.27, F.S.; providing definitions; prohibiting discrimination in the rental of a dwelling to a person with a disability or a disability-related need who has an emotional support animal; prohibiting a landlord from requiring such person to pay extra compensation for such animal; providing an exception; authorizing a landlord to request certain written documentation under certain circumstances; authorizing the Department of Health to adopt rules; prohibiting the falsification of written documentation or other misrepresentation regarding the use of an emotional support animal; providing penalties; specifying that a person with a disability or a disability-related need is liable for certain damage done by her or his emotional support animal; exempting a landlord from certain liability; providing applicability; amending s. 413.08, F.S.; providing applicability; amending s. 419.001, F.S.; conforming terminology to changes made by the act; conforming a cross-reference; amending s. 760.22, F.S.; updating terminology; amending s. 760.29, F.S.; extending specified exemptions to conform to changes made by the act; conforming terminology to changes made by the act; amending ss. 760.23, 760.24, 760.25, and 760.31, F.S.; conforming terminology to changes made by the act; providing an effective date.

36-00536B-20 20201084__

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

Section 1. Section 760.27, Florida Statutes, is created to read:

760.27 Prohibited discrimination in the rental of housing to persons with a disability or disability-related need who use an emotional support animal.—

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

(a) "Emotional support animal" means an animal that does not require training to do specific work or perform special tasks for a person with a disability but, by virtue of its presence, provides support to alleviate one or more identified symptoms or effects of a person's disability.

(b) "Landlord" means the owner or lessor of a dwelling.

(2) To the extent required by federal law, rule, or regulation, it is unlawful to discriminate in the rental of a dwelling to a person with a disability or disability-related need who has or obtains an emotional support animal. A person with a disability or a disability-related need must, upon request, be allowed to keep such animal in the dwelling as a reasonable accommodation in housing, and such person may not be required to pay extra compensation for such animal.

(3) Unless otherwise prohibited by federal law, rule, or regulation, a landlord may:

(a) Prohibit an emotional support animal if such animal poses a direct threat to the safety or health of others or poses a direct threat of physical damage to the property of others which cannot be reduced or eliminated by another reasonable accommodation.

(b) If a person's disability or disability-related need is not readily apparent, request written documentation prepared by a health care practitioner, as defined in s. 456.001, which verifies that the person has a disability or a disability-related need and has been under the practitioner's care or treatment for such disability or need, and the animal provides support to alleviate one or more identified symptoms or effects of the person's disability or disability-related need. If a person requests to keep more than one emotional support animal, the landlord may request such written documentation establishing the need for each animal. The written documentation must be prepared in a format prescribed by the Department of Health in rule and may not be prepared by a health care practitioner whose exclusive service to the person with a disability is preparation of the written documentation in exchange for a fee. The department may adopt rules to administer this paragraph.

(c) Require proof of compliance with state and local requirements for licensing and vaccination of an emotional support animal.

(4) A person who falsifies written documentation, as described in subsection (3), for an emotional support animal or otherwise knowingly and willfully misrepresents herself or himself, through conduct or verbal or written notice, as having a disability or disability-related need and being qualified to use an emotional support animal commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and must perform 30 hours of community service for an organization that serves persons with disabilities or for another entity or organization at the discretion of the court,

to be completed within 6 months after conviction.

(5)(a) A person with a disability or disability-related need is liable for any damage done to the premises or to another person on the premises by her or his emotional support animal.

(b) A landlord is not liable for any damage done to the premises or to any person on the premises by an emotional support animal that is authorized as a reasonable accommodation for a person with a disability or disability-related need under this section, the federal Fair Housing Act, s. 504 of the Rehabilitation Act of 1973, or any other federal, state, or local law.

(6) This section does not apply to a service animal as defined in s. 413.08.

Section 2. Paragraph (b) of subsection (6) of section 413.08, Florida Statutes, is amended to read:

413.08 Rights and responsibilities of an individual with a disability; use of a service animal; prohibited discrimination in public employment, public accommodations, and housing accommodations; penalties.—

(6) An individual with a disability is entitled to rent, lease, or purchase, as other members of the general public, any housing accommodations offered for rent, lease, or other compensation in this state, subject to the conditions and limitations established by law and applicable alike to all persons.

(b) An individual with a disability who has a service animal or who obtains a service animal is entitled to full and equal access to all housing accommodations provided for in this section, and such individual ~~a person~~ may not be required to pay

extra compensation for such animal. However, such individual ~~a person~~ is liable for any damage done to the premises or to another individual ~~person~~ on the premises by the animal. A housing accommodation may request proof of compliance with vaccination requirements. This paragraph does not apply to an emotional support animal as defined in s. 760.27.

Section 3. Paragraph (e) of subsection (1) of section 419.001, Florida Statutes, is amended to read:

419.001 Site selection of community residential homes.—

(1) For the purposes of this section, the term:

(e) "Resident" means any of the following: a frail elder as defined in s. 429.65; a person who has a disability ~~handicap~~ as defined in s. 760.22(3)(a) ~~s. 760.22(7)(a)~~; a person who has a developmental disability as defined in s. 393.063; a nondangerous person who has a mental illness as defined in s. 394.455; or a child who is found to be dependent as defined in s. 39.01 or s. 984.03, or a child in need of services as defined in s. 984.03 or s. 985.03.

Section 4. Present subsections (3) through (6) of section 760.22, Florida Statutes, are redesignated as subsections (4) through (7), respectively, and present subsection (7) of that section is amended, to read:

760.22 Definitions.—As used in ss. 760.20-760.37, the term:

(3)~~(7)~~ "Disability" ~~"Handicap"~~ means:

(a) A person has a physical or mental impairment which substantially limits one or more major life activities, or he or she has a record of having, or is regarded as having, such physical or mental impairment; or

(b) A person has a developmental disability as defined in

s. 393.063.

Section 5. Section 760.23, Florida Statutes, is amended to read:

760.23 Discrimination in the sale or rental of housing and other prohibited practices.—

(1) It is unlawful to refuse to sell or rent after the making of a bona fide offer, to refuse to negotiate for the sale or rental of, or otherwise to make unavailable or deny a dwelling to any person because of race, color, national origin, sex, disability ~~handicap~~, familial status, or religion.

(2) It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, national origin, sex, disability ~~handicap~~, familial status, or religion.

(3) It is unlawful to make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, national origin, sex, disability ~~handicap~~, familial status, or religion or an intention to make any such preference, limitation, or discrimination.

(4) It is unlawful to represent to any person because of race, color, national origin, sex, disability ~~handicap~~, familial status, or religion that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(5) It is unlawful, for profit, to induce or attempt to induce any person to sell or rent any dwelling by a

representation regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, national origin, sex, disability ~~handicap~~, familial status, or religion.

(6) The protections afforded under ss. 760.20-760.37 against discrimination on the basis of familial status apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(7) It is unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability ~~handicap~~ of:

(a) That buyer or renter;

(b) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(c) Any person associated with the buyer or renter.

(8) It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability ~~handicap~~ of:

(a) That buyer or renter;

(b) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(c) Any person associated with the buyer or renter.

(9) For purposes of subsections (7) and (8), discrimination includes:

(a) A refusal to permit, at the expense of the ~~handicapped~~ person with a disability, reasonable modifications of existing

premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises; or

(b) A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

(10) Covered multifamily dwellings as defined herein which are intended for first occupancy after March 13, 1991, shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site as determined by commission rule. Such buildings shall also be designed and constructed in such a manner that:

(a) The public use and common use portions of such dwellings are readily accessible to and usable by ~~handicapped~~ persons with disabilities.

(b) All doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by a person in a wheelchair.

(c) All premises within such dwellings contain the following features of adaptive design:

1. An accessible route into and through the dwelling.

2. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations.

3. Reinforcements in bathroom walls to allow later installation of grab bars.

4. Usable kitchens and bathrooms such that a person in a wheelchair can maneuver about the space.

(d) Compliance with the appropriate requirements of the American National Standards Institute for buildings and facilities providing accessibility and usability for persons with a physical disability ~~physically handicapped people~~, commonly cited as ANSI A117.1-1986, suffices to satisfy the requirements of paragraph (c).

State agencies with building construction regulation responsibility or local governments, as appropriate, shall review the plans and specifications for the construction of covered multifamily dwellings to determine consistency with the requirements of this subsection.

Section 6. Section 760.24, Florida Statutes, is amended to read:

760.24 Discrimination in the provision of brokerage services.—It is unlawful to deny any person access to, or membership or participation in, any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him or her in the terms or conditions of such access, membership, or participation, on account of race, color, national origin, sex, disability ~~handicap~~, familial status, or religion.

Section 7. Subsection (1) and paragraph (a) of subsection (2) of section 760.25, Florida Statutes, are amended to read:

760.25 Discrimination in the financing of housing or in residential real estate transactions.—

(1) It is unlawful for any bank, building and loan association, insurance company, or other corporation,

association, firm, or enterprise the business of which consists in whole or in part of the making of commercial real estate loans to deny a loan or other financial assistance to a person applying for the loan for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him or her in the fixing of the amount, interest rate, duration, or other term or condition of such loan or other financial assistance, because of the race, color, national origin, sex, disability ~~handicap~~, familial status, or religion of such person or of any person associated with him or her in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance, or because of the race, color, national origin, sex, disability ~~handicap~~, familial status, or religion of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given.

(2)(a) It is unlawful for any person or entity whose business includes engaging in residential real estate transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, national origin, sex, disability ~~handicap~~, familial status, or religion.

Section 8. Paragraph (a) of subsection (1) and paragraph (a) of subsection (5) of section 760.29, Florida Statutes, are amended to read:

760.29 Exemptions.—

(1)(a) Nothing in ss. 760.23, ~~and~~ 760.25, and 760.27 applies to:

1. Any single-family house sold or rented by its owner, provided such private individual owner does not own more than three single-family houses at any one time. In the case of the sale of a single-family house by a private individual owner who does not reside in such house at the time of the sale or who was not the most recent resident of the house prior to the sale, the exemption granted by this paragraph applies only with respect to one sale within any 24-month period. In addition, the bona fide private individual owner shall not own any interest in, nor shall there be owned or reserved on his or her behalf, under any express or voluntary agreement, title to, or any right to all or a portion of the proceeds from the sale or rental of, more than three single-family houses at any one time. The sale or rental of any single-family house shall be excepted from the application of ss. 760.20-760.37 only if the house is sold or rented:

a. Without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate licensee or such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such licensee or person; and

b. Without the publication, posting, or mailing, after notice, of any advertisement or written notice in violation of s. 760.23(3).

Nothing in this provision prohibits the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as is necessary to perfect or transfer the title.

2. Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his or her residence.

(5) Nothing in ss. 760.20-760.37:

(a) Prohibits a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than race, color, national origin, sex, disability ~~handicap~~, familial status, or religion.

Section 9. Subsection (5) of section 760.31, Florida Statutes, is amended to read:

760.31 Powers and duties of commission.—The commission shall:

(5) Adopt rules necessary to implement ss. 760.20-760.37 and govern the proceedings of the commission in accordance with chapter 120. Commission rules shall clarify terms used with regard to ~~handicapped~~ accessibility for persons with disabilities, exceptions from accessibility requirements based on terrain or site characteristics, and requirements related to housing for older persons. Commission rules shall specify the fee and the forms and procedures to be used for the registration required by s. 760.29(4)(e).

Section 10. This act shall take effect July 1, 2020.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/19/20
Meeting Date

1084
Bill Number (if applicable)

Topic Emotional Support Animals

Amendment Barcode (if applicable)

Name Kelly Mallette

Job Title

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Phone (850) 224-3427

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Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Apartment Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-19-2020
Meeting Date

1084
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Emotional Support Animals

Name Andrew Rutledge

Job Title Public Policy

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Realtors

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/19/20
Meeting Date

1084
Bill Number (if applicable)

Topic Emotional Support Animals

Amendment Barcode (if applicable)

Name Travis Moore

Job Title

Address P.O. Box 2020
Street

St. Petersburg FL 33731
City *State* *Zip*

Phone 727.421.6902

Email travis@moore-relations.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Community Associations Institute

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-19-20
Meeting Date

1084
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Greg Pound

Job Title Saving families

Address 9166 Sunrise Dr
Street

Phone _____

Largo FL. 33773
City *State* *Zip*

Email _____

Speaking: ☐ For ☐ Against ☒ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 1188
INTRODUCER:	Rules Committee; Governmental Oversight and Accountability Committee; and Senator Albritton
SUBJECT:	Public Records/Records of Insurers/Department of Financial Services
DATE:	February 19, 2020 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Palecki	Knudson	BI	**Favorable**
2.	Hackett	McVaney	GO	**Fav/CS**
3.	Palecki	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1188 creates section 631.195, F.S., to make confidential and exempt from public inspection and copying requirements certain information held by the Department of Financial Services (DFS) relating to the personal financial and health information of insurance consumers, and underwriting, personnel, payroll, and consumer claim information, which, if not exempted from the public records disclosure requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution, may result in public disclosure of traditionally private financial and health information and thereby create the opportunity for theft and fraud, jeopardizing the financial security of the subject person(s).

This bill also makes confidential and exempt from public inspection and copying requirements certain sensitive business information held by DFS which is protected from public records disclosure requirements if held by the Office of Insurance Regulation (OIR). Disclosure of the exempted information, which includes Own-Risk and Solvency Assessment (ORSA) summary reports, corporate governance annual disclosures, and information received from the NAIC and other governmental entities, would injure the subject insurer or insurance group in the marketplace by providing competitors with confidential business information.

Pursuant to the Open Government Sunset Review Act, this public records exemption is scheduled to repeal October 2, 2025, unless reviewed and saved from repeal though reenactment by the Legislature.

The DFS will incur some costs associated with redacting exempt and confidential and exempt information in response to public records requests.

This bill takes effect July 1, 2020.

II. Present Situation:

Access to Public Records – Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[1] The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[2]

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.[3] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[4] Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.[5]

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[6] The Florida Supreme Court has interpreted the statutory definition of "public record" to include "material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.[7]

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[1] FLA. CONST. art. I, s. 24(a).
[2] *Id*.
[3] *See* Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)
[4] *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).
[5] Section 119.01(1), F.S. Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[6] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."
[7] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc*., 379 So. 2d 633, 640 (Fla. 1980).

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[8] A violation of the Public Records Act may result in civil or criminal liability.[9]

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.[10] The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.[11]

General exemptions from the public records requirements are contained in the Public Records Act.[12] Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.[13]

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." Custodians of records designated as "exempt" are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.[14] Custodians of records designated as "confidential and exempt" may not disclose the record except under circumstances specifically defined by the Legislature.[15]

Open Government Sunset Review Act

The Open Government Sunset Review Act[16] (the Act) prescribes a legislative review process for newly created or substantially amended[17] public records or open meetings exemptions, with specified exceptions.[18] It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[19]

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[8] Section 119.07(1)(a), F.S.
[9] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[10] FLA. CONST. art. I, s. 24(c).
[11] *Id*. *See, e.g.*, *Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).
[12] *See, e.g.*, s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).
[13] *See, e.g.*, s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).
[14] *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).
[15] *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).
[16] Section 119.15, F.S.
[17] An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.
[18] Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.
[19] Section 119.15(3), F.S.

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.[20] An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;[21]
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;[22] or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.[23]

The Act also requires specified questions to be considered during the review process.[24] In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.[25] If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.[26]

Transfer of Records upon Delinquency Proceedings

Along with the Department of Financial Services (DFS), the Office of Insurance Regulation (OIR) is tasked with enforcing the provisions of the Florida Insurance Code, chs. 624-632, 634-636, 641-642, 648 and 651, F.S.[27] OIR is responsible for examining the affairs, transactions, accounts, records, and assets of each authorized insurer.[28] In the event that the OIR determines

[20] Section 119.15(6)(b), F.S.
[21] Section 119.15(6)(b)1., F.S.
[22] Section 119.15(6)(b)2., F.S.
[23] Section 119.15(6)(b)3., F.S.
[24] Section 119.15(6)(a), F.S. The specified questions are:
- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

[25] *See generally* s. 119.15, F.S.
[26] Section 119.15(7), F.S.
[27] *See* Sections 624.307(1) and 624.01, F.S.
[28] Section 624.316(1)(a), F.S.

that one or more grounds[29] for the initiation of delinquency proceedings against an insurer exist, such as insolvency,[30] the Insurers Rehabilitation and Liquidation Act[31] requires the Director of the OIR to notify DFS of that determination, and to provide DFS with all necessary documentation and evidence, thereby enabling DFS to initiate the delinquency proceeding.[32] This documentation and evidence may include confidential and sensitive information. Upon such notice, DFS is tasked with initiating delinquency proceedings pursuant to ch. 631, F.S., which constitute the sole and exclusive method of liquidating, rehabilitating, reorganizing, or conserving an insurer.[33]

The nature of DFS's statutory duties regarding delinquency proceedings require DFS to assume custodianship of insurer records. When DFS is appointed as receiver of an insurer during the course of a delinquency proceeding, Florida Statutes expressly vest DFS with the title to all of the property of the insurer, including all of the books and records, wherever located.[34] Similarly, orders to rehabilitate or liquidate a domestic insurer must direct DFS to take possession of the property of the insurer.[35] Orders to liquidate the business of a United States branch of an alien insurer having trusteed assets in this state shall be on the same terms as those prescribed for domestic insurers, but DFS only takes possession of the assets within that branch.[36] Orders to conserve the assets of a foreign or alien insurer likewise must require DFS to take possession of the property of the insurer within this state.[37]

Consumer Personal Financial and Health Information

Insurance companies routinely possess records of policyholders and claimants during the normal course of business which include personal, private financial and medical information.[38] Such information held by solvent insurers is not freely available to any person or entity. If such

[29] Grounds for rehabilitation generally include, but are not limited to, impairment, insolvency, failure to comply with OIR orders or to submit records for examination, and other violations of law. *See* Section 631.051, F.S. Grounds for liquidation include imminent or actual insolvency, an attempt or actually commencement of voluntary liquidation or dissolution, and a failure to timely complete organization and obtain a certificate of authority. Section 631.061, F.S. DFS may also apply to the circuit court for an order appointing it as ancillary receiver of, and directing it to liquidate the business and assets of, a foreign insurer which has assets, business, or claims in this state upon the appointment in the domiciliary state of such insurer of a receiver, liquidator, conservator, rehabilitator, or other officer by whatever name called for the purpose of liquidating the business of such insurer. Section 631.091, F.S. Grounds for conservation of foreign insurers include the same as those for rehabilitation and liquidation, or when the insurer's property has been sequestrated in its domiciliary sovereignty or in any other sovereignty. Section 631.071, F.S. Grounds for the conservation of alien insurers are the same, but additionally include an insurer's failures to timely comply with an OIR order to make good an impairment of trusteed funds. Section 631.081, F.S.

[30] "Insolvency" means that all the assets of the insurer, if made immediately available, would not be sufficient to discharge all its liabilities or that the insurer is unable to pay its debts as they become due in the usual course of business. Section 631.011(14), F.S. Depending on the context, insolvency also includes and is defined as "impairment of surplus" and "impairment of capital" as defined in s. 631.011(13) and (12), F.S., respectively. *Id.*

[31] Part I of Chapter 631, F.S.

[32] Section 631.031(1), F.S.

[33] Section 631.021(3), F.S.

[34] *See* s. 631.141(1)-(2), F.S.

[35] *See* ss. 631.101 and 631.111, F.S., respectively.

[36] Section 631.121, F.S.

[37] Section 631.131(1), F.S.

[38] Department of Financial Services, *Bill Analysis of SB 1188*, January 2, 2020 (on file with the Senate Banking and Insurance Committee).

records are made available, it is usually through confidentiality agreements or court orders, and with reference to certain state and federal privileges and confidentiality laws and regulations.[39] The Legislature often enacts public records exemptions to restrict disclosure of private financial and medical information, an example of which is found in s. 624.23, F.S., which makes confidential and exempt the personal financial and health information held by the DFS or OIR relating to a consumer's complaint or inquiry regarding a matter or activity regulated under the Florida Insurance Code or s. 440.191, F.S.

ORSA Summary Reports, Corporate Governance Annual Disclosures, and NAIC Information

Section 624.4212(3)(a)-(b), F.S., provides that, except for information obtained by the OIR that would otherwise be available for public inspection, the following information held by the OIR is confidential and exempt from the disclosure requirements of s. 119.07(1), F.S. and s. 24(a), Art. I of the State Constitution:

- *ORSA Reports.* Own-Risk and Solvency Assessments (ORSA) are internal assessments conducted by insurers and insurance groups of the material and relevant risks associated with their business plan and the sufficiency of their capital resources to support those risks.[40] An ORSA Summary Report is a high-level ORSA summary of an insurer or insurance group, consisting of a single report or combination of reports.[41] Insurers are required to conduct an ORSA at least annually.[42] Unless an insurer or insurance group is exempted from this requirement or compliance is otherwise waived, insurers must submit an ORSA summary report to the OIR once every calendar year.[43]
- *Corporate Governance Annual Disclosures.* Corporate governance annual disclosures are reports filed with the OIR by insurers and insurance groups which describe the corporate governance framework and structure of the insurer or insurance group, the policies and practices for directing senior management and of the most senior governing entity and its significant committees, and the processes by which the board, its committees, and senior management ensure the appropriate amount of oversight to critical risk areas that impact the insurer's business activities.[44] Insurers, or insurer members of an insurance group of which the OIR is the lead state regulator, must submit corporate governance annual disclosure to the OIR annually.[45]

In addition to being confidential and exempt from the disclosure requirements of s. 119.07(1), F.S. and s. 24(a), Art. I of the State Constitution, both ORSA summary reports and corporate governance annual disclosures, along with related documents, are considered privileged and confidential. OIR may not produce these documents in response to a subpoena or other discovery directed to the OIR, and any such filings and related documents are not admissible as evidence in any private civil action. Disclosure of these records to the OIR under any provision of the

[39] *Id*.
[40] Section 628.8015(1)(d), F.S.
[41] Section 628.8015(1)(f), F.S.
[42] Section 628.8015(2)(b), F.S.
[43] Section 628.8015(2)(c)1.a.(I), F.S. *See* Section 628.8015(2)(d), F.S., for exemptions, and s. 628.8015(2)(e), F.S., for waiver requirements.
[44] Section 628.8015(1)(a) and (3)(c)4.a.-d., F.S.
[45] Section 628.8015(3)(b)1.a.-c., F.S.

Insurance Code or by the OIR pursuant to an exception of the public records exemption does not constitute a waiver of any applicable claim of privilege. The OIR, and any person in receipt of these documents while acting under the authority of the OIR, are not permitted or required to testify in any civil action concerning the documents.[46]
Section 624.4212(4), F.S., provides that information received from the National Association of Insurance Commissioners (NAIC), a governmental entity in this or another state, the Federal Government, or a government of another nation which is confidential or exempt if held by that entity, and which is held by the OIR for use in the performance of its duties relating to insurer valuation and solvency, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

There are limited circumstances under which the OIR may disclose this confidential and exempt information, including:

- Upon the prior written consent of the subject insurer;
- Pursuant to a court order;
- To the Actuarial Board for Counseling and Discipline, upon a request stating that the information is for the purpose of professional disciplinary proceedings and specifying procedures satisfactory for preserving the confidentiality of the information;
- To other states, federal and international agencies, the NAIC and its affiliates and subsidiaries, and state, federal, and international law enforcement authorities, including members of a supervisory college described in s. 628.805, F.S., if the recipient agrees in writing to maintain the confidential and exempt status of the document, material, or other information and has certified in writing its legal authority to maintain such confidentiality; and
- For the purpose of aggregating information on an industrywide basis and disclosing the information to the public, only if the specific identities of the insurers, or persons or affiliated persons, are not revealed.[47]

The Public Records Act is liberally construed in favor of open government, and public records exemptions are construed narrowly and limited to their stated purpose.[48] The above exemptions expressly apply to ORSA summary reports, corporate governance annual disclosures, and information from NAIC or another government entity when held by OIR. Currently, no public records exemption exists for these records when held by DFS.

III. Effect of Proposed Changes:

Section 1 creates s. 631.195, F.S. Subsection (1) provides definitions of "consumer" and "personal financial and health information." "Consumer" is defined to encompass prospective purchasers, purchasers, beneficiaries of, and applicants for any insurance product or service, along with the family members and dependents of such persons. "Personal financial and health information" includes information regarding a consumer's personal health condition, disease, or injury; any history of a consumer's personal medical diagnosis or treatment; the existence, identification, nature, or value of a consumer's assets, liabilities, or net worth; the existence or

[46] Section 628.8015(4), F.S.
[47] Section 624.4212(5)(a)-(e), F.S.
[48] *Marino v. University of Florida*, 107 So. 3d 1231, 1233 (Fla. 1st DCA 2013).

content of, or any individual coverage or status under a consumer's beneficial interest in, any insurance policy or annuity contract; and the existence, identification, nature, or value of a consumer's interest in any insurance policy, annuity contract, or trust.

Subsection (2) designates certain insurer records made or received by DFS while acting as receiver as confidential and exempt from the public records disclosure requirements of from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. These records include personal financial and health information of a consumer, customarily maintained underwriting files, personnel and payroll records, consumer claim files, ORSA summary reports, corporate governance annual disclosures and supporting documents, and information received from the NAIC or other governmental entity which is confidential and exempt if held by that entity. The exemptions would create parity for policy holders and claimants regardless of the solvency of their insurance provider.[49]

Subsection (3) provides that the exemptions in subsection (2) applies retroactively to those records held by DFS before the date the bill takes effect, along with those records held by DFS on or after that date.

Subsection (4) describes the circumstances under which the records made confidential and exempt by subsection (2) may be released. Disclosure of these records is authorized upon the following circumstances:

- Upon the written request of any state or federal agency, but only if disclosure is necessary for the receiving entity to perform its duties and responsibilities. Receiving agencies are required to maintain the confidential and exempt status of those records.
- When required by a properly authorized civil, criminal, or regulatory investigation, a subpoena, or a summons issued by a federal, state or local authority;
- When released to the NAIC and its affiliates or subsidiaries, but only if the recipient agrees in writing to maintain the confidential and exempt status of the records;
- When released to the guaranty associations and funds of the various states who are receiving, adjudicating, and paying the claims of an insolvent insurer upon delinquency proceedings. Recipients are required to maintain the confidential and exempt status of the records.
- Upon the written request of a designated employee whose responsibilities include the investigation and disposition of claims relating to suspected fraudulent insurance acts; and
- Upon the written request of a consumer or their legally authorized representative, DFS may release the personal financial and health information of that consumer.

Subsection (5) provides that the section is subject to the Open Government Sunset Review Act, and shall stand repealed on October 2, 2025, unless reviewed and reenacted by the Legislature.

Section 2 provides public necessity statements describing the justifications for the exemptions in Section 1. Subsection (1) lists the information the legislature has found it a public necessity to hold confidential and exempt: personal financial and health information of a consumer, customarily maintained underwriting files, personnel and payroll records, consumer claim files, ORSA summary reports, corporate governance annual disclosures and supporting documents,

[49] Department of Financial Services, *Bill Analysis of SB 1188*, January 2, 2020 (on file with the Senate Banking and Insurance Committee).

and information received from the NAIC or other governmental entity which is confidential and exempt if held by that entity.

Subsection (2)(a) indicates that disclosure of the specified financial, health, underwriting, personnel, payroll, and consumer claim information would create the opportunity for theft and fraud, and thereby jeopardize the financial security of the subject person. Limiting disclosure of such information held by DFS protects the financial interests of the subject persons, and recognizes the expectation of and right to privacy in all matters concerning a person's financial interests. Furthermore, matters of personal health are traditionally private and disclosure may have a negative effect on a person's business and personal relationships, and could result in detrimental financial consequences.

Subsection (2)(b) states that ORSA reports, or substantially similar ORSA reports, and the supporting documents contain highly sensitive and strategic information about an insurer or insurance group which provides the OIR with an effective early warning mechanism for preventing insolvencies, assisting the OIR to protect policy holders and promote a stable insurance market. However, public disclosure of this information would injure the insurer or insurance group by providing competitors with detailed insight into their financial position, risk management strategies, business plans, pricing and market strategies, management systems, and operational protocols.

Subsection (2)(c) states that corporate governance annual disclosures describe the governance structure and internal practices and procedures used in conducting the business affairs of insurers. Insurers use this information to make strategic operational decisions affecting their competitive position, and to manage their financial condition; regulators utilize this information to promote market integrity. Given the sensitive nature of the information, is a public necessity to make such information confidential and exempt, as release would injure the subject insurers or insurance group in the marketplace by providing competitors with confidential business information.

Subsection (2)(d) states that divulgence of confidential or exempt information received from the NAIC or other governments could impede the exchange of information and communication among regulators, thus jeopardizing the ability of regulators to effectively supervise insurers.

Subsection (3) declares that the harm that may result from the release of any of the described information outweighs any public benefit from disclosure of the information.

Section 3 provides that the bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for certain records held by DFS, including financial, health, underwriting, personnel, payroll, and consumer claim information, ORSA summary reports, corporate governance annual disclosures, and confidential information received from NAIC and other governmental entities. Thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for justifying the exemption.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the exemptions for financial, health, underwriting, personnel, payroll, and consumer claim information is to protect insurance consumers and employees from fraud, identity theft, and other harm that may result from public disclosure of their financial interests. The purpose of the exemptions for ORSA reports and corporate governance annual disclosures is to protect insurers and insurance groups from competitive harm in the marketplace resulting from public disclosure of confidential business information. The purpose of exempting information received from NAIC or other governmental entities is to encourage the exchange of information among regulators, thereby protecting their ability to effectively supervise insurers and insurance groups. This bill exempts only traditionally private health and financial information and confidential business information from the public records requirements. These exemptions do not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will be subject to the cost associated with an agency making redactions in response to a public records request.

C. Government Sector Impact:

The DFS will incur minor costs relating to the redaction of exempt records.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 631.195 of the Florida Statutes.

Additional Information:

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

CS/CS by Rules on February 19, 2020:
The CS revises the public necessity statement to remove an extra word for clean-up purposes.

CS by Governmental Oversight and Accountability on February 3, 2020:
The CS amends the exemptions to hold personal health and financial information, personnel and payroll files, and other sensitive insurance documents confidential as well as exempt. The CS further combines subsections two and three of the original bill's first section for clarity. Finally, the CS revises the public necessity statement to match the content and structure of the exemption itself.

B. Amendments:

None.

535922

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/19/2020	.	
	.	
	.	
	.	

The Committee on Rules (Albritton) recommended the following:

Senate Amendment

Delete line 189
and insert:
from the release of such information outweighs any

By the Committee on Governmental Oversight and Accountability; and Senator Albritton

585-03008-20 20201188c1

A bill to be entitled

An act relating to public records; creating s. 631.195, F.S.; defining the terms "consumer" and "personal financial and health information"; providing an exemption from public records requirements for consumer personal financial and health information, certain underwriting files, insurer personnel and payroll records, consumer claim files, certain reports and documents relating to insurer own-risk, solvency assessments, corporate governance annual disclosures, and certain information received from the National Association of Insurance Commissioners or governments in records made or received by the Department of Financial Services acting as receiver as to an insurer; providing retroactive applicability of the exemptions; authorizing the release of confidential and exempt information under specified circumstances; providing for future legislative review and repeal of the exemptions; providing statements of public necessity; providing an effective date.

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

Section 1. Section 631.195, Florida Statutes, is created to read:

631.195 Records of insurers; public records exemptions.—

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

(a) "Consumer" means a prospective purchaser of, a purchaser of, a beneficiary of, or an applicant for any

585-03008-20 20201188c1

insurance product or service. The term also includes a family member or dependent of such person.

(b) "Personal financial and health information" means:

1. A consumer's personal health condition, disease, or injury;

2. A history of a consumer's personal medical diagnosis or treatment;

3. The existence, nature, source, or amount of a consumer's personal income or expenses;

4. Records of, or relating to, a consumer's personal financial transactions of any kind;

5. The existence, identification, nature, or value of a consumer's assets, liabilities, or net worth;

6. The existence or content of, or any individual coverage or status under a consumer's beneficial interest in, any insurance policy or annuity contract; or

7. The existence, identification, nature, or value of a consumer's interest in any insurance policy, annuity contract, or trust.

(2) The following records, in whatever form, of an insurer which are made or received by the department, acting as receiver pursuant to this chapter, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) All personal financial and health information of a consumer.

(b) Underwriting files of a type customarily maintained by an insurer transacting lines of insurance similar to those lines transacted by the insurer.

(c) Personnel and payroll records of the insurer.

(d) Consumer claim files.

(e) An ORSA summary report, a substantially similar ORSA summary report, and supporting documents submitted to the office pursuant to s. 628.8015.

(f) A corporate governance annual disclosure and supporting documents submitted to the office pursuant to s. 628.8015.

(g) Information received from the National Association of Insurance Commissioners, a governmental entity in this or another state, the Federal Government, or a government of another nation which is confidential or exempt if held by that entity and which is held by the department for use in the performance of its duties relating to insurer solvency.

(3) The exemptions in subsection (2) apply to records held by the department before, on, and after July 1, 2020.

(4) Records or portions of records made confidential and exempt by this section may be released under any of the following circumstances:

(a) To any state or federal agency, upon written request, if disclosure is necessary for the receiving entity to perform its duties and responsibilities. The receiving agency shall maintain the confidential and exempt status of such record or portion of such record.

(b) To comply with a properly authorized civil, criminal, or regulatory investigation or a subpoena or summons by a federal, state, or local authority.

(c) To the National Association of Insurance Commissioners and its affiliates and subsidiaries, if the recipient agrees in writing to maintain the confidential and exempt status of the records.

(d) To the guaranty associations and funds of the various states which are receiving, adjudicating, and paying claims of the insolvent insurer subject to delinquency proceedings pursuant to this chapter. The receiving guaranty association shall maintain the confidential and exempt status of such record or portion of such record.

(e) Upon written request, to persons identified as designated employees as described in s. 626.989(4)(d), whose responsibilities include the investigation and disposition of claims relating to suspected fraudulent insurance acts.

(f) In the case of personal financial and health information of a consumer, upon written request of the consumer or the consumer's legally authorized representative.

(5) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds it is a public necessity to make confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution:

(a) All personal financial and health information of a consumer;

(b) Underwriting files of a type customarily maintained by an insurer transacting lines of insurance similar to those lines transacted by the insurer;

(c) Personnel and payroll records of an insurer;

(d) Consumer claim files;

(e) An own-risk and solvency assessment (ORSA) summary

report, a substantially similar ORSA summary report, and supporting documents submitted to the Office of Insurance Regulation pursuant to s. 628.8015, Florida Statutes;

(f) A corporate governance annual disclosure and supporting documents submitted to the office pursuant to s. 628.8015, Florida Statutes; and

(g) Information received from the National Association of Insurance Commissioners, a governmental entity in this or another state, the Federal Government, or a government of another nation which is confidential or exempt if held by that entity and which is held by the department for use in the performance of its duties relating to insurer solvency.

(2)(a) Disclosure of financial, health, underwriting, personnel, payroll, or consumer claim information would create the opportunity for theft or fraud, thereby jeopardizing the financial security of a person. Limiting disclosure of such information held by the department is also necessary in order to protect the financial interests of the persons to whom that information pertains. Such information could be used for fraudulent or other illegal purposes, including identity theft, and could result in substantial financial harm. Furthermore, every person has an expectation of and a right to privacy in all matters concerning his or her financial interests. Additionally, matters of personal health are traditionally private and confidential concerns between the patient and his or her health care provider. The private and confidential nature of personal health matters pervades both the public and private health care sectors. Public disclosure of health information could have a negative effect upon a person's business and personal

relationships and could also have detrimental financial consequences.

(b) In conducting an ORSA, an insurer or insurance group identifies and evaluates the material and relevant risks to the insurer or insurance group and the adequacy of capital resources to support these risks. The ORSA summary report, substantially similar ORSA report, and supporting documents contain highly sensitive and strategic financial information about an insurer or insurer group. Having a comprehensive and unbiased assessment provides the office with an effective early warning mechanism for preventing insolvencies and protecting policyholders and promotes a stable insurance market. Divulging the ORSA summary report, substantially similar ORSA summary report, and supporting documents will injure the insurer or insurance group by providing competitors with detailed insight into their financial position, risk management strategies, business plans, pricing and marketing strategies, management systems, and operational protocols.

(c) The corporate governance annual disclosure describes an insurer's governance structure and the internal practices and procedures used in conducting the business affairs of the company, making strategic operational decisions affecting its competitive position, and managing its financial condition. Release of the corporate governance annual disclosure and supporting documents will injure the insurer or insurance group in the marketplace by providing competitors with the insurer's or the insurance group's confidential business information. Broad disclosure will give state regulators a thorough understanding of the corporate governance structure and internal

policies and practices used by insurers and promote market integrity. Effective governance mechanisms will enable insurers to take any necessary corrective actions and achieve strategic goals while allowing the office to perform its regulatory duties effectively and efficiently.

(d) Divulgence of confidential or exempt information received from the National Association of Insurance Commissioners or governments could impede the exchange of information and communication among regulators across multiple agencies and jurisdictions and jeopardize the ability of regulators to effectively supervise insurers and groups operating in multiple jurisdictions and engaged in significant cross-border activities.

(3) The Legislature finds that the harm that may result from the release of such location information outweighs any public benefit that may be derived from the disclosure of the information.

Section 3. This act shall take effect July 1, 2020.

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 13, 2020

I respectfully request that **1188**, relating to DFS Public Records, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Ben Albritton
Florida Senate, District 26

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/19
Meeting Date

1188
Bill Number (if applicable)

Topic Public Records / Records of Insurers / Dept. of Financial Services
Amendment Barcode (if applicable)

Name Meredith Stanfield

Job Title Director of Legislative & Cabinet Affairs

Address PL 11, The Capitol
Street

Phone (850) 413-2890

Tallahassee FL 32399
City *State* *Zip*

Email Meredith.Stanfield@myFloridaCFO.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Department of Financial Services

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 1256
INTRODUCER:	Senator Albritton
SUBJECT:	Telegraph Companies
DATE:	February 17, 2020
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Imhof	IT	**Favorable**
2.	Elsesser	Cibula	JU	**Favorable**
3.	Wiehle	Phelps	RC	**Favorable**

I. Summary:

SB 1256 repeals chapter 363, F.S., which provides for the liability of telegraph or telegram companies for specified negligent acts, penalties, damages, and attorney fees, and legal procedures.

The bill takes effect July 1, 2020.

II. Present Situation:

Chapter 363, F.S., contains the Florida statutes on telegraph and telegram companies. The first four sections (ss. 363.02, 363.03, 363.04, and 363.05, F.S.) were enacted in 1907; the remaining five sections (ss. 363.06, 363.07, 363.08, 363.09, and 363.10, F.S.) were enacted in 1913; and none of the sections were significantly amended after enactment.

Enacted in 1907, and codified in ss. 362.02-363.05, F.S., the statutes provide for liability, penalties, and damages for failure of a telegraph company to meet statutory operational requirements. Any telegraph company engaged in the business of transmitting messages over a telegraph line in this state that negligently fails to promptly deliver a received message to the addressee is liable to the sender for a $50 penalty and liable to both the sender and addressee for all resulting damages. These penalties apply only to deliveries in incorporated cities and towns. A failure to timely deliver a message is presumed to be negligent. Additionally, any telegraph company that refuses to accept any tendered, legible message for transmission, together with the required fee, is liable to the sender and addressee for a penalty of $50 plus all resulting damages, unless the company shows that the line or lines over which such message should be transmitted were damaged preventing transmission. Any person recovering any of the above penalties or damages is entitled to also recover 10 percent of the amount recovered as attorney's fees.[1]

[1] Chapter 5628, ss. 1-3 and ch. 5629, ss. 1 and 2, Laws of Fla. (1907).

Enacted in 1913, and codified in ss. 363.06-363.10, F.S., the statutes make a telegram company liable to the sender and addressee of any telegram received for transmission and delivery for mental anguish, distress or feeling, physical and mental pains and suffering resulting from the negligent failure to promptly transmit or promptly deliver such telegram, or because of the negligent failure to correctly transmit and deliver such telegram. In an action to seek damages for the negligence of a telegraph company, the telegraph company has the burden of proof to show, by a preponderance of the evidence, that it was free from fault. Additionally, a telegram company that receives a message in cipher is liable for damages resulting from the negligent failure to promptly transmit and deliver the telegram in cipher.[2] The receipt by any person engaged in the telegram business of a message for transmission constitutes notice to that person that the telegram is important, requiring prompt and correct transmission and delivery. Finally, all contractual provisions attempting to relieve or exempt a telegram company from liabilities imposed by law or to limit the time in which suits may be brought for negligent failure to perform any duty imposed by law are declared to be against the public policy of this state and to be illegal and void, and no court in this state is to give effect to any such provisions.[3]

It appears that telegraph offices and telegrams have largely, if not completely, been replaced by messaging methods such as emails, instant messaging, texts, and tweets. In 2017, the Federal Communications Commission updated its rules to remove regulations outmoded by technological advances and market forces. Among the deletions were a number of references to telegraph services as the commission was "not aware of any interstate telegraph service providers today"; as "[t]elegraph service is obsolete"; and as the commission found "that no purpose is served by requiring any remaining (or future) providers of telegraph service" to comply with the rules under review, "[n]or is the public interest served by maintaining outdated and unnecessary requirements in our rules."[4]

III. Effect of Proposed Changes:

The bill repeals chapter 363, F.S., which provides for the liability of telegraph or telegram companies for specified negligent acts, penalties, damages, and attorney fees, and legal procedures.

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[2] The term "cipher" is not defined but appears to mean code.
[3] Chapter 6522, ss. 1-5, Laws of Fla. (1913).
[4] 32 FCC Rcd 7132 (8) (2017).

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill repeals the following sections of the Florida Statutes: 363.02, 363.03, 363.04, 363.05, 363.06, 363.07, 363.08, 363.09, and 363.10.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Albritton

26-01721-20 20201256__

A bill to be entitled

An act relating to telegraph companies; repealing chapter 363, F.S., relating to the regulation of telegraph companies and telegrams; providing an effective date.

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

Section 1. Chapter 363, Florida Statutes, consisting of sections 363.02, 363.03, 363.04, 363.05, 363.06, 363.07, 363.08, 363.09, and 363.10, is repealed.

Section 2. This act shall take effect July 1, 2020.

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

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 10, 2020

I respectfully request that **Senate Bill #1256**, relating to Telegraph Companies, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Ben Albritton
Florida Senate, District 26

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 Rules

BILL:	CS/SB 1590
INTRODUCER:	Judiciary Committee and Senator Powell
SUBJECT:	Juror Sanctions
DATE:	February 17, 2020
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	**Fav/CS**
2.	Davis	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1590 revises the sanctions that a court may impose on someone who is duly summoned for jury duty but fails to attend and does not provide a sufficient excuse to the court. Currently, a court "shall" impose a fine on the violator that does not exceed $100 and may hold the person in contempt of court, which may result in imprisonment.

The bill authorizes a court to impose any combination of the following sanctions on a person who is summoned to attend as a juror but fails to attend and does not provide a sufficient excuse:

- A fine that does not exceed $1,000.
- A term of imprisonment that does not exceed 3 days.
- An order to perform community service.

In addition to these sanctions, the court may consider the failure of a person to attend without providing a sufficient excuse to be contempt of court. The court may not impose a penalty of imprisonment on that person unless he or she is able to obtain legal representation.

The bill takes effect upon becoming a law.

II. Present Situation:

Jury Duty

The clerks of the court are responsible for summoning prospective jurors at least 14 days before they are to appear in court for jury selection.[1]

If a person is summoned to attend as a juror and fails to attend without providing a sufficient excuse, he or she:

- Must pay a fine that does not exceed $100, which will be imposed by the court, and
- May be held in contempt of court.[2]

The statute does not specify or limit the sanctions a court may impose for contempt of court.

Recent Events Involving the Imposition of Contempt of Court for Missing Jury Duty

According to media reports, on August 20, 2019, Deandre Somerville, age 21 of West Palm Beach, was selected for jury duty to begin the following day. He overslept, did not attend, and did not call the court with an explanation. His absence resulted in a 45 minute delay in court proceedings that day.

Several weeks later the police arrested Mr. Somerville at home. Circuit Court Judge John Kastrenakes found Deandre Somerville in criminal contempt of court and sentenced him to 10 days in jail, 12 months of probation, 150 hours of community service, a $233 fine, and required him to write a letter of apology. Mr. Somerville served the 10 days' jail time. After Mr. Somerville read his letter of apology in court, the judge said he believed the letter was sincere and he was satisfied that Mr. Somerville was "totally rehabilitated." The sentence was reduced to three months of probation and 30 hours of community service. The sentence was later vacated.[3]

Contempt of Court

"Contempt" is generally characterized as behavior that defies the authority of a court. Because the behavior interferes with or hinders the administration of justice, it may be punished by a fine or imprisonment.[4]

Contempt authority has been described as one of the most essential powers a court possesses to protect itself against people who do not regard the court's dignity or authority. It also exists to ensure that government functions in an orderly fashion. The court's authority to punish someone

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[1] Section 40.23(1), F.S.
[2] Section 40.23(3), F.S.
[3] John Bacon, USA Today, *Judge clears record of 21-year-old jailed 10 days for oversleeping jury duty: 'Totally rehabilitated"* (Oct. 8, 2019) https://www.usatoday.com/story/news/nation/2019/10/08/deandre-somerville-record-cleared-florida-judge-john-kastrenakes/3906219002/ and Hannah Winston, The Palm Beach Post, *In contempt cases, Kastrenakes toughest judge on jurors* (Nov. 8, 2019) https://www.palmbeachpost.com/news/20191108/in-contempt-cases-kastrenakes-toughest-judge-on-jurors.
[4] BLACK'S LAW DICTIONARY (11th ed. 2019).

for contempt is inherent and exists independently of a legislative grant of authority.[5,6] Because contempt authority is inherently vested in the judicial branch and because it existed at common law for centuries, additional grants of contempt authority are not found throughout the statutes.

It should be noted, however, that there is no provision in statute that requires a court to hold someone in contempt.[7] In realizing the tremendous reach and breadth of contempt powers, courts have recognized the need to exercise restraint. In a 1994 Florida Supreme Court opinion reprimanding a judge for his abuse of his contempt authority, the Court stated:

> Nevertheless, although the power of contempt is an extremely important power for the judiciary, it is also a very awesome power and is one that should never be abused . . . As such, it is critical that the exercise of this contempt power never be used by a judge in a fit of anger, in an arbitrary manner, or for the judge's own sense of justice.[8]

Accordingly, the exercise of a court's contempt power must be used only rarely,[9] with caution and with restraint.[10]

Criminal and Civil Contempt, Direct and Indirect Contempt

Contempt of court may be classified in a variety of forms. It may be criminal or civil or even direct or indirect.[11]

There are generally two broad forms of contempt charges: criminal and civil. A primary distinction between the two is that criminal contempt is punitive and civil contempt is remedial. Criminal contempt imposes a sanction that cannot be avoided while civil contempt provides an incentive that allows the person held in contempt to avoid or minimize the sanction by demonstrating compliance with a court order. In spite of the formulas developed to classify criminal and civil contempt, there are instances when contempt is not completely civil or criminal but an act that has characteristics of both.[12]

Criminal Contempt

Criminal contempt is behavior that obstructs or interferes with the administration of justice by the courts. It is conduct directed against a court's authority and dignity. The criminal contempt sanction is focused on punishing intentional violations of court orders as well as vindicating a court's authority. For someone to be held in criminal contempt there must be an element of

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[5] 11 FLA. JUR 2D s. 6 *Contempt* (2019). See also, *Walker v. Bentley*, 678 So. 2d 1265 (1996).
[6] According to case law and additional resources, the following people are among those who have been held in contempt: parties to a legal proceeding, prospective jurors, attorneys, witnesses, county commissioners, municipal officers, judges in lower courts who do not answer an order to show cause, and judges who act contrary to an order of a superior court. 11 FLA. JUR 2D s. 5 *Contempt* (2019).
[7] 11 FLA. JUR 2D s. 7 *Contempt* (2019).
[8] *In re Inquiry Concerning a Judge, Daniel W. Perry*, 641 So. 2d 366, 368 (1994).
[9] *McRoy v. State*, 31 So. 3d 273 (Fla. 5th DCA 2010).
[10] *M.L., a child v. State*, 819 So. 2d 240, 242 (Fla. 2d DCA 2002).
[11] 11 FLA. JUR 2D s. 2 *Contempt* (2019).
[12] *Id*.

willfulness such as a willful act or omission that is designed to hinder the functioning of the court. Criminal contempt is considered a common law crime that is not categorized in statute as a felony or a misdemeanor.[13]

Civil Contempt

In contrast, civil contempt is not considered a felony or a misdemeanor but rather a power held by the courts. It consists of failing to do an act that a court in a civil case has ordered someone to do for the benefit of the opposing party. The purpose of the sanction is to compel a party to act in compliance with the court's order. For a court to hold someone in civil contempt there must be an element of intent to violate a court order.[14]

Direct and Indirect Contempt

Criminal contempt proceedings are further classified as either direct or indirect contempt. For an offense to be considered direct criminal contempt, all of the acts underlying the conduct must be committed in open court and in the presence of the judge. In contrast, indirect criminal contempt involves conduct committed outside the presence of the court or where the act was committed in the presence of the court but the judge needs to rely on statements or additional witness testimony to reach a conclusion.[15]

Although it may seem unusual and contrary to constitutional guarantees, the U.S. Supreme Court first held in 1888 that a judge has the inherent authority to immediately punish a person for direct contempt of court by imposing a fine or imprisonment without also providing notice or a special hearing on the accusation.[16]

In 2016, the Florida Supreme Court addressed the distinctions between direct and indirect contempt in *Plank v. State*.[17] The case involved a prospective juror who appeared for jury duty impaired by alcohol and with the capacity to fall asleep during jury selection. After the judge questioned Mr. Plank and received the results of a breathalyzer test, the judge held a contempt hearing concerning Mr. Plank's conduct during jury selection. The court found Mr. Plank in direct criminal contempt of court for coming to the courthouse drunk, disrupting jury selection, and distracting other jurors. He was sentenced to 30 days in jail because the trial court found his actions were directed against the court's authority and dignity, were determined to interfere with the judicial function, and tended to "embarrass, hinder or obstruct the Court in the administration of justice and to lessen the Court's dignity."[18,19]

[13] *Id*.
[14] *Id*.
[15] *Plank v. State,* 190 So. 3d 594, 606 (Fla. 2016).
[16] *In re Terry*, 128 U.S. 289 (1888).
[17] *Id.*
[18] *Plank* at 599.
[19] Seventeen days after the court imposed sentence, the trial judge mitigated the sentence to time served and ordered that the defendant be released immediately.

On appeal, the Florida Supreme Court noted that the district courts of appeal were split in determining whether, in a direct criminal contempt proceeding, a person is entitled to an attorney before incarceration may be imposed as punishment.[20] The Court ultimately held:

> [T]hat a trial court is not required to appoint counsel or give the individual an opportunity to seek counsel in a direct criminal contempt proceeding, even if incarceration is imposed as punishment, as long as the period of incarceration does not exceed six months—the point at which the defendant's Sixth amendment rights are triggered.[21]

The Court decided that the trial court committed error in classifying Mr. Plank's conduct as *direct criminal contempt* and should have treated the case as *indirect criminal contempt* because the judge also needed to rely on testimony about contemptuous acts that occurred outside her presence to reach her conclusion. Accordingly, the trial court should have relied upon the procedural rules for indirect criminal contempt which include the right to counsel. The Court did note, however, that in spite of the constitutional guarantee of the right to counsel, the nation's courts "have long had the inherent authority to impose immediate penalties in direct criminal contempt proceedings, where the misconduct occurred within the court's direct view and interfered with the court's ability to discharge its essential functions."[22]

In discussing the "unusual power" to punish direct criminal contempt, the Court noted that the judge is the prosecutor who sits in judgment over the defendant who is accused of assailing the court's dignity. That particular circumstance is not condoned anywhere else in law, and for that reason, the Court stated, the power must be used cautiously and sparingly.[23]

The Right to Legal Counsel before Incarceration is Imposed

Mr. Plank's legal team argued on appeal that s. 27.51, F.S., pertaining to the appointment of a public defender to represent an indigent person, required the appointment of legal counsel before a trial court could act immediately on direct criminal contempt that had just occurred in the court's presence. The Court rejected the contention and said that nothing in the statute required the trial court to appoint counsel before acting to punish conduct "to prevent the demoralization of the court's authority before the public."[24]

In contrast, the Court concluded that in proceedings for indirect criminal contempt,[25] which involve conduct that is committed outside of the court's presence, a defendant is entitled to be represented by legal counsel at a contempt hearing.

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[20] The Sixth Amendment to the United States Constitution provides, in part, that "In all criminal prosecutions, the accused shall . . . have the assistance of counsel for his defence." The analogous right to counsel in the State Constitution is contained in Article I, section 16.
[21] *Plank* at 600.
[22] *Plank* at 601.
[23] *Plank* at 605.
[24] *Plank* at 603.
[25] Indirect criminal contempt is governed by Florida rule of Criminal Procedure 3.840.

Does Missing Jury Duty Occur in the Court's Presence?

It seems that reasonable people and courts may and will disagree over whether someone's absence from jury duty occurs in or out of the presence of a court. One case that is instructive involved a criminal contempt matter in which a respondent failed to appear pursuant to a court order. The defendant was held in civil contempt for not complying with an underlying matter, and then held in direct criminal contempt for failing to appear in court to answer questions regarding the underlying matter. The state was joined as an indispensable party on appeal and it recommended that the failure to appear be treated as indirect contempt and the Florida Supreme Court agreed. The Court reasoned that intent is an essential element of contempt and to support a conviction for direct criminal contempt, a court must have knowledge of each element of contempt. Because each act associated with a failure to appear does not occur in the court's actual presence, it does not constitute direct criminal contempt.[26]

Based upon this reasoning, the Court said that a failure to appear in court will result in a charge of indirect criminal contempt, and Florida Rule of Criminal Procedure 3.840 must be followed. The rule requires additional procedural protections including a defendant's right to be represented by counsel, have compulsory process for the attendance of witnesses, and the ability of the defendant to testify in his or her own defense.

The Separation of Powers Doctrine and Legislative Authority to Limit Contempt Sanctions

Any effort by the Legislature to limit the power of the courts to hold someone in contempt for failing to perform jury service implicates the separation of powers doctrine. The State Constitution establishes the separation of powers among the legislative, executive, and judicial branches of government. The Constitution states that:

> "No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless provided herein."[27]

Therefore, when the legislative branch seeks to limit the judicial branch's inherent authority to punish contempt charges, it should exercise caution.

In an 1866 decision, *Ex parte Edwards*,[28] the Florida Supreme Court stated that

> [I]n the absence of statutory restrictions or limitations, the power of the courts over contempts is omnipotent and its exercise is not to be enquired into by any other tribunal."

The Court noted that "this unrestricted power" had never been seriously questioned in England nor in the (relatively young at that time) United States. However, the opinion then stated that the genius of the American people, who are "ever sensitively jealous of restraints upon the personal liberty of the citizen" had caused restraints "through the action of the legislative department, to limit and restrict this common law power of the courts." The action of the Legislature gave the

[26] *State v. Diaz de la Portilla*, 177 So. 3d 965 (Fla. 2015).
[27] FLA. CONST. art. II, s. 3.
[28] *Ex parte Edwards*, 11 Fla. 174 (1866).

courts the authority to punish contempts by payment of a fine or imprisonment, but not otherwise. The fine could not exceed $100 and the imprisonment could not exceed 30 days. The Court concluded that the statute limiting contempt punishments "arises entirely from the enactment of our statute limiting the power of the courts to punish for contempts."

In 1930, the Florida Supreme Court again addressed the courts' scope and authority over contempt powers. In *State v. Lehman*,[29] the Court quoted from the *Edwards* decision but noted that the language must be construed in light of the principle that even the courts' power to punish for contempt *is limited* by the Bill of Rights and that no court may impose punishments that are indefinite or cruel and unusual. The Court concluded by saying that it was not its place to say what punishment should be imposed for contempt of court as long as the punishment is imposed within the limitations established by the Constitution and laws.

In 1992, the Florida Supreme Court[30] reviewed several cases in which juveniles were incarcerated for contempt of court. The most relevant quotation from the case addressed the use of contempt and sanction powers. The Court held:

> It is beyond question that the legislature has the power to determine how and to what extent the courts may punish criminal conduct, including contempt. Thus, although it has been recognized that courts have both an inherent and a statutory power to make a finding of contempt . . . the *sanctions* to be used by the courts in punishing contempt may properly be limited by statute.[31]

In 1996, the Florida Supreme Court again addressed the issue of contempt powers in *Walker v. Bentley*.[32] The Legislature amended a 1994 statute and attempted to eliminate a circuit court's use of indirect criminal contempt as a means to enforce compliance with injunctions for protection against domestic violence. The Court also noted that the Legislature may limit by statute the sanctions to be used by the courts to punish contempt. But the Court concluded that the Legislature may not eliminate a circuit court's ability to apply the "inherent power of civil or criminal contempt." In summary fashion, the Court stated that:

> Any legislative enactment that purports to do away with the inherent power of contempt directly affects a separate and distinct function of the judicial branch" and is therefore, a violation of the separation of powers doctrine.[33]

From these cases it is apparent that the courts have not offered clear guidance on how the scope of contempt authority may be regulated. Some cases have upheld limitations on contempt powers while others have overturned them as being impermissible restrictions on the judiciary's authority.

[29] *State v. Lehman*, 129 So. 818 (1930).
[30] *A.A. v. Rolle*, 604 So. 2d 813, 815 (1992).
[31] *Id.* at 815.
[32] *Walker v. Bentley*, 678 So. 2d 1265 (1996).
[33] *Id.* at 1267.

Federal Law

Under federal law, a person who fails to appear for jury service and who was not excused by the court may be ordered to appear and show cause as to why he or she failed to comply with the jury service summons. That failure to appear or failure to show good cause for failing to report may result in:

- A fine of $1000,
- Imprisonment up to three days,
- An order to perform community service, or
- Any combination of those three measures.[34]

III. Effect of Proposed Changes:

The bill amends the current law governing the sanctions that a court may impose on a person who is duly summoned for jury duty but who fails to attend without providing a sufficient excuse. Currently, a court "shall" impose a fine that does not exceed $100, and the court has the discretion to consider the failure to attend as an act of contempt of court. The current statute does not state or limit what sanctions may be imposed as a punishment for contempt of court.

The bill authorizes a court to impose any combination of the following sanctions on a person who is summoned to attend as a juror but fails to attend and does not provide a sufficient excuse:

- A fine that does not exceed $1,000.
- A term of imprisonment that does not exceed 3 days.
- An order to perform community service.

In addition to these sanctions, the court may consider the person's failure to attend and the absence of a sufficient excuse to be an act of contempt of court. However, the court may not impose a sanction of imprisonment on that person unless he or she is able to obtain legal representation.

The maximum fine, limit on the term of imprisonment, and order to perform community service mirror the federal law[35] as discussed in the Present Situation.

The contempt provision, which prohibits a court from imposing a term of imprisonment unless the person is able to obtain legal representation, appears to be consistent with decisions in this area. Because the Florida Supreme Court has determined that a person's failure to appear in court is not a *direct act of criminal contempt*, but an *indirect act of criminal contempt*, Florida Rule of Criminal Procedure 3.840 applies. The rule provides that "The defendant is entitled to be represented by counsel, have compulsory process for the attendance of witnesses, and testify in his or her own defense.[36]

The bill takes effect upon becoming a law.

[34] 28 U.S.C. ss. 1864(b) and 1866(g).
[35] *Id*.
[36] Fla. R. Crim. P. 3.840(d).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 40.23 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 Judiciary on February 4, 2020:
The committee substitute differs from the underlying bill by establishing four specific limits on sanctions that a court may impose for missing jury duty. The court may impose a fine that does not exceed $1,000, impose imprisonment that does not exceed 3 days, and order community service. Additionally, the court is prohibited from imposing a term of imprisonment for contempt of court unless the defendant is able to obtain legal representation.

B. Amendments:

None.

By the Committee on Judiciary; and Senator Powell

590-03114-20 20201590c1

A bill to be entitled

An act relating to juror sanctions; amending s. 40.23, F.S.; revising available sanctions for any person who fails to attend court as a juror without any sufficient excuse; restricting a court from imposing a term of imprisonment on any person who fails to attend as a juror without any sufficient excuse and is found in contempt of court unless the person is able to obtain legal representation; providing an effective date.

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

Section 1. Subsection (3) of section 40.23, Florida Statutes, is amended to read:

40.23 Summoning jurors.—

(3)(a) Any person who is duly summoned to attend as a juror in any court and who fails to attend without any sufficient excuse is subject to the following sanctions, or any combination thereof:

1. ~~shall pay~~ A fine not to exceed $1,000 ~~$100~~, ~~which fine shall be~~ imposed by the court to which the juror was summoned.

2. A term of imprisonment not to exceed 3 days.

3. An order to perform community service.~~, and,~~

(b) In addition to the sanctions specified in paragraph (a), the ~~such~~ failure to attend as a juror without any sufficient excuse may be considered a contempt of court. However, the court may not order any term of imprisonment for a person who is found in contempt of court under this paragraph unless the person is able to obtain legal representation.

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

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 4, 2020

I respectfully request that **Senate Bill #1590,** relating to Juror Sanctions, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Bobby Powell
Florida Senate, District 30

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 Rules

BILL:	CS/SB 7010
INTRODUCER:	Governmental Oversight and Accountability Committee and Military and Veterans Affairs and Space Committee
SUBJECT:	OGSR/Servicemembers and the Spouses and Dependents of Servicemembers
DATE:	January 27, 2020 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Brown	Caldwell		**MS Submitted as Comm. Bill/Fav**
1.	Hackett	McVaney	GO	**Fav/CS**
2.	Brown	Phelps	RC	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 7010 amends s. 119.0171(5)(k), Florida Statutes, to save from repeal the current exemption for contact information of a servicemember and his or her family that is held by an agency. Specifically, the exemption protects from public inspection and copying identification and location information of current or former active duty servicemembers who served after September 11, 2001, for the United States Armed Forces, a reserve component of the Armed Forces, or the National Guard. The exemption is scheduled for repeal October 2, 2020.

Protected information consists of the:

- Home address, telephone number, and date of birth of a servicemember;
- Home address, telephone number, date of birth, and place of employment of a spouse or dependent; and
- Name and location of a school attended by a spouse or dependent or a day care facility attended by a dependent.

The bill also removes the requirement that the servicemember include a statement that reasonable efforts have been made to otherwise protect the information from public access in their written request to an agency to have qualified information exempted, which expands the exemption. The bill provides for future legislative review and repeal on October 2, 2025, unless the Legislature saves the exemption from repeal before that date.

Because the bill expands the public records exemption, a two-thirds vote by each house of the Legislature is required for its passage.

This bill takes effect October 1, 2020.

II. Present Situation:

Access to Public Records – Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[1] The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[2]

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.[3] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[4] Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.[5]

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[6] The Florida Supreme Court has interpreted the statutory definition of "public record" to include "material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.[7]

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[1] FLA. CONST. art. I, s. 24(a).
[2] *Id*.
[3] *See* Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)
[4] *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).
[5] Section 119.01(1), F.S. Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[6] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."
[7] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc*., 379 So. 2d 633, 640 (Fla. 1980).

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[8] A violation of the Public Records Act may result in civil or criminal liability.[9]

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.[10] The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.[11]

General exemptions from the public records requirements are contained in the Public Records Act.[12] Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.[13]

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." Custodians of records designated as "exempt" are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.[14] Custodians of records designated as "confidential and exempt" may not disclose the record except under circumstances specifically defined by the Legislature.[15]

Open Government Sunset Review Act

The Open Government Sunset Review Act[16] (the Act) prescribes a legislative review process for newly created or substantially amended[17] public records or open meetings exemptions, with specified exceptions.[18] It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[19]

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[8] Section 119.07(1)(a), F.S.
[9] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[10] FLA. CONST. art. I, s. 24(c).
[11] *Id*. *See, e.g.*, *Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).
[12] *See, e.g.*, s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).
[13] *See, e.g.*, s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).
[14] *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).
[15] *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).
[16] Section 119.15, F.S.
[17] An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.
[18] Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.
[19] Section 119.15(3), F.S.

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.[20] An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;[21]
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;[22] or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.[23]

The Act also requires specified questions to be considered during the review process.[24] In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.[25] If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.[26]

Public Records Exemption for Contact Information of Servicemembers

On November 30, 2014, the Federal Bureau of Investigation (FBI) and the Department of Homeland Security (DHS) issued a Joint Intelligence Bulletin, *Islamic State of Iraq and the Levant and Its Supporters Encouraging Attacks Against Military Personnel* (Joint Bulletin).[27] In

[20] Section 119.15(6)(b), F.S.
[21] Section 119.15(6)(b)1., F.S.
[22] Section 119.15(6)(b)2., F.S.
[23] Section 119.15(6)(b)3., F.S.
[24] Section 119.15(6)(a), F.S. The specified questions are:
- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

[25] *See generally* s. 119.15, F.S.
[26] Section 119.15(7), F.S.
[27] Federal Bureau of Investigation (FBI) and Department of Homeland Security (DHS), *Joint Intelligence Bulletin, Islamic State of Iraq and the Levant and Its Supporters Encouraging Attacks Against Military Personnel* (Nov. 30, 2014)(on file with the Senate Committee on Military and Veterans Affairs and Space).

it, the FBI and the DHS warn of potential attacks by the Islamic State of Iraq and the Levant (ISIL) on current and former servicemembers.[28] Specifically the report states,

> The FBI recently received reporting indicating individuals located overseas are spotting and assessing like-minded individuals in the United States who are willing and capable of conducting attacks against current and former US-based members of the United States military.[29]

Based on this, the Joint Bulletin urged servicemembers to be mindful of their content and presence on online social media accounts.[30]

In 2015, the Legislature enacted a public records exemption for the contact and location information of a servicemember and his or her family.[31] Specifically, the public records exemption protects from disclosure the identification and location information of current or former active duty servicemembers who served after September 11, 2001 of:

- The United States Armed Forces;
- A reserve component of the Armed Forces; or
- The National Guard.

The public records exemption protects from disclosure the identification and location information of the servicemember, his or her spouse, and his or her dependents. The information protected by the exemption consists of the:

- Home address, telephone number (including the telephone number of a personal communications device), and date of birth of a servicemember;
- Home address, telephone number (including the telephone number of a personal communications device), date of birth, and place of employment of the spouse or dependent of a servicemember; and
- Name and location of a school attended by the spouse of a servicemember or a school or day care facility attended by a dependent of a servicemember.

The servicemember must request the exemption in writing and include a statement that the servicemember has made reasonable efforts to protect the information from public access through other means. The term "reasonable efforts" is not defined in law.

The original public necessity statement articulates as justification for the exemption that without the exemption the safety of servicemembers, their spouses, and their dependents is jeopardized. Specifically, the public necessity statement provided:

> Servicemembers perform among the most critical, most effective, and most dangerous operations in defense of our nation's freedom. Terrorist groups have threatened servicemembers and their families and have encouraged terrorist sympathizers to harm servicemembers and their families within the United

[28] *Id*.
[29] *Id*. at p. 2.
[30] *Id*. at p. 2.
[31] Chapter 2015-86, L.O.F.

> States. One terrorist group has allegedly gathered the photographs and home addresses of servicemembers from public sources to create and publish a list of servicemembers in order to make such persons vulnerable to an act of terrorism.[32]

The public records exemption is scheduled to repeal on October 2, 2020.

Open Government Sunset Review

Survey on Public Records Exemption

During the interim of 2019, Senate and House staff drafted a survey to query various entities on the public records exemption.[33] Staff sent the survey to 23 state agencies, and the associations for the supervisors of elections and the property appraisers for distribution. Staff received 80 responses, or 51 percent:

- State agencies - Of 22 surveyed, 18 responded, for an 82 percent response rate[34];
- Supervisors of Elections - Of 67 surveyed, 21 responded, for a 31 percent response rate; and
- Property Appraisers. - Of 67 surveyed, 41 responded, for a 61 percent response rate.

Requests for Public Record Exemption

When asked about the number of requests made since the exemption took effect, the year 2015, entities receiving the top requests are as follows:

- Agencies - The Department of Highway Safety and Motor Vehicles received 512 requests, the Fish and Wildlife Conservation Commission received 34, and the Department of Law Enforcement received 20 to date;
- Supervisors of Elections - Volusia County received 1,465 requests, Pinellas received 325, and Okaloosa received 243 requests to date;
- Property Appraisers - Brevard County received 1,000 requests; Miami-Dade received 95, and Pinellas County received 76 requests to date.[35]

Many entities responded that they have received zero requests for this exemption[36], and a few did not answer whether they had received requests.

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[32] *Id*.

[33] *Open Government Sunset Review Questionnaire, Identification and Location Information of Servicemembers* (July 2019)(on file with the Senate Committee on Military and Veterans Affairs and Space).

[34] Surveys were sent to the Departments of Agriculture and Consumer Services, Business and Professional Regulation, Children and Families, Corrections, Economic Opportunity, Education, Elder Affairs, Environmental Protection, Financial Services, Health, Highway Safety and Motor Vehicles, Juvenile Justice, Law Enforcement, Legal Affairs, Lottery, Management Services, Military Affairs, Revenue, State, Transportation, Veterans' Affairs, and the Fish and Wildlife Conservation Commission.

[35] A number of agencies and counties report that they maintain data on requests for public records exemptions in the aggregate, so that they have no way of discerning how many requests are made for this specific public records exemption.

[36] Entities reporting that they have not received any requests for this public records exemption are: Agencies - the Departments of Corrections, Economic Opportunity, Environmental Protection, Health, Juvenile Justice, and Legal Affairs; Property Appraisers - Alachua, Baker, Bradford, Charlotte, Columbia, Desoto, Dixie, Gilchrist, Gulf, Hardee, Hendry, Indian River, Liberty, Madison, Okeechobee, Putnam, Taylor, Union, and Wakulla counties; and Supervisors of Election - Citrus, Collier, Holmes, and Union counties.

Process for Request of Public Record Exemption

Respondents were asked if the agency has a process in place for a servicemember to request a public records exemption. Entities responded that some provide a form, online, in person or both while others handle it case by case. Several agencies include a public records exemption request form in the packet provided to new employees. Forms typically provide a checkoff list of available exemptions.[37] A number of counties specifically identify form DOS-119, provided by the Florida Department of State, as the Public Records Exemption Request form in use by their office.[38] The form requires servicemembers to have served after September 11, 2001, and for the applicant to certify, in signing the form that reasonable efforts have been made to protect the information from public disclosure.[39]

Complaints About Public Records Exemption

When asked whether the agency has received complaints about the exemption, nine entities responded that they had received at least one. Most complaints were made to the Property Appraiser and may indicate the unique nature of the information maintained by their office and accessed for various purposes. As noted by the St. Johns County Property Appraiser:

> We occasionally hear verbal complaints, because once someone has made their information confidential within our office, we can no longer discuss any sort of property information with them electronically or over the phone. Further, other organizations or departments (such as the building department) cannot look up the tax payer's information electronically. So, if the taxpayer is trying to pull a permit, or refinance their house, they physically have to come in with their driver's license or ID to receive such information when usually those organizations can simply pull it from our website.[40]

Recommendation on Exemption

When asked whether an entity would recommend continuing the exemption, of total respondents, 37 recommended reenacting the exemption as is. In contrast, 25 respondents recommended reenactment with changes. Of these, 10 respondents recommended deleting the reasonable efforts requirement or defining the term.[41] Twelve other respondents specifically requested that the Legislature lift the restriction on the post-September 11, 2001 date.[42] Remaining respondents either did not answer the question or specified that they wished to remain neutral.

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[37] These are the Departments of Education, Environmental Protection, Financial Services, Health, Legal Affairs, Management Services, Military Affairs, and Revenue.
[38] These are Bay, Collier, Flagler, Levy, Monroe, Pinellas, Putnam, Volusia, and Walton counties.
[39] Florida Department of State, *Public Records Exemption Request*, *Form DOS-119; Rev. 06/2015*; available at:https://dos.myflorida.com/media/695507/public-records-exemption-formdos-119.pdf.
[40] St. Johns County Property Appraiser, *Survey Response* (July 18, 2019) (on file with the Senate Committee on Military and Veterans Affairs and Space).
[41] These are: the Florida Department of Law Enforcement; the Property Appraisers of Charlotte, Duval, Hernando, Miami-Dade, Palm Beach, St. Lucie, and Wakulla counties; and the Supervisors of Election of Collier and Union counties.
[42] These are: the Departments of Elder Affairs, Highway Safety and Motor Vehicles, Law Enforcement, and Military Affairs; the Property Appraisers of Brevard and Polk Counties; and the Supervisors of Election of Hernando, Levy, Okaloosa, Pinellas, St. Johns, and Volusia counties.

Only the Alachua County Property Appraiser, St. Johns County Property Appraiser, and Wakulla County Property Appraiser recommended repeal of the exemption.[43]

Current Threat to Servicemembers

The FBI provided a letter[44] to the Florida Senate updating threats to servicemembers since its issuance of the Joint Bulletin of 2014. In the letter, the FBI submitted that on September 23, 2016, Ardit Ferizi was sentenced to 20 years imprisonment for providing material support to the Islamic State of Iraq and the Levant (ISIL), and accessing databases containing personal identifying information of tens of thousands of people, including military servicemembers and other governmental personnel. Mr. Ferizi subsequently culled the personal identifying information of servicemembers and other government personnel, which totaled about 1,300 individuals, and provided it to an ISIL member, who on August 11, 2015, posted by tweet a hit list that contained the personal identifying information of the individuals.

In February 2019, the FBI Jacksonville Field Office identified 12 new web pages that were hosting the ISIL hit list with all or some of the personal identifying information of the 1,300 individuals. One of the pages states:

> O Crusaders, as you continue your ag[g]ression towards the Islamic State and your bombing campaign against the muslims, know that we are in your emails and computer systems, watching and recording your every move … . [W]e are extracting confidential data and passing on your personal information to the soldiers … who … will strike at your necks in your own lands![45]

Requirement of Reasonable Efforts

As noted above, what is meant by "a reasonable effort" to protect information from public access is not defined in law. Prior to 2017, various other public record exemptions required the requesting applicant to include a written statement that a reasonable effort had been made to protect the information from other sources.

In 2017, however, the Legislature deleted this requirement from the following exemptions afforded to:

- A general magistrate;
- A special magistrate;
- A judge of compensation claims;
- An administrative law judge of the Division of Administrative hearings;
- A child support enforcement hearing officer;
- A current or former guardian ad litem;
- A current or former investigator or inspector of the Department of Business and Professional Regulation;

[43] "The concept, first enacted for law enforcement decades ago, has been eclipsed by the continued advancement of available technology." Alachua County Property Appraiser, *Survey Response* (July 25, 2019) (on file with the Senate Committee on Military and Veterans Affairs and Space).
[44] FBI, *Re: Update on Department of Justice Press Release 16-1085 regarding Ardit Ferizi* (Oct. 11, 2019)(on file with the Senate Committee on Military and Veterans Affairs and Space).
[45] *Id*.

- A county tax collector;
- A current or former employee of the Department of Health;
- A current or former impaired practitioner consultant retained by an agency or whose duties result in a determination of a person's skill and safety to practice a licensed profession;
- A current or former emergency medical technician or paramedic; or
- A current or former employee of an inspector general or internal audit department.[46]

In its public necessity statement, the Legislature notes:

> Requiring these personnel prove that they made reasonable efforts to protect their identification and location information is an added burden on these individuals as well as on agencies . . .. The extent to which these individuals must protect their information from public accessibility is unclear. It is also unclear how much proof an agency needs . . .. The burden on an agency … adversely impacts the effective and efficient administration of government in establishing who is eligible for an exemption. Relatively few public record exemptions require an individual to prove that he or she made reasonable efforts to protect his or her information …. Such inconsistencies among public record exemptions reduce accuracy and efficiency when redacting exempt information …. It is not in the public interest for the public to receive inaccurately redacted information.[47]

Currently, in addition to the servicemember exemption the only remaining requirement of reasonable efforts applies to an exemption for a current or former United States attorney, assistant United States attorney, judge of the United States Court of Appeal, United States district judge, or United States magistrate.[48]

Other Exemptions

Part of the OGSR requires a review of other exemptions that may protect the same public record or meeting, and consideration of whether multiple exemptions may be merged. While it is possible that portions of information may be protected if a servicemember qualifies under another exemption, for example if the servicemember works in law enforcement [49], s. 119.071(5)(k), F.S., uniquely protects the identifying and location information of servicemembers and their families. Additionally, no other exemption would be appropriate for merging. Therefore, the information and application of this exemption is not duplicated elsewhere in law, nor can it be merged with another exemption.

III. Effect of Proposed Changes:

The public necessity statement for the original exemption provides as justification that without the exemption the safety of servicemembers, their spouses, and their dependents is jeopardized.

[46] Chapter 2017-66, L.O.F.
[47] *Id*.
[48] Section 119.071(5)(i), F.S.
[49] Section 119.071(4)(d), F.S., provides a public records exemption for home addresses, phone numbers, dates of birth, and photographs of active or former sworn law enforcement personnel.

Based on information received from the FBI, that concern has not lifted. Therefore, the bill reenacts the public record exemption for servicemembers and their families.

Additionally, the bill expands the exemption by removing the requirement that a servicemember provide a statement that reasonable efforts have been made to otherwise protect the information. Removing this requirement reflects concerns expressed by survey respondents in how to define a reasonable effort and is also consistent with the wholesale change that the Legislature made in 2017 in deleting the requirement of reasonable efforts from most other exemptions.

Although some survey respondents also requested that the Legislature expand the exemption to all servicemembers, the bill does not do so, as the intended target of the threat appears to continue to apply to servicemembers who served after September 11, 2001.[50]

The public necessity statement provides that exempting servicemembers' identifying information is required to protect the servicemembers from targeted threats made by terrorist groups.

The bill provides for future legislative review and repeal on October 2, 2025, unless the Legislature saves the exemption from repeal before that date.

Because the bill expands the public records exemption, a two-thirds vote of each house of the Legislature is needed for it to pass.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. Because the bill expands the public records exemption to include identification and location information for certain servicemembers and their families regardless of the servicemember's efforts to protect such information, a two-thirds vote is required for enactment.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity

[50] FBI, *supra* note 40.

justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption which supports the public policy of the exemption.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect the personal identifying information of servicemembers contained in a record held by government agencies from use by terrorist groups. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will continue to be subject to the cost associated with an agency making redactions in response to a public records request.

C. Government Sector Impact:

The agencies will continue to incur costs relating to the redaction of exempt records.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071 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 Governmental Oversight and Accountability on January 13, 2020:
The committee substitute revises the public necessity statement to explain that the exemption is meant to thwart targeted threats on servicemembers from terrorist groups.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Rules (Wright) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (k) of subsection (5) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(5) OTHER PERSONAL INFORMATION.—

(k)1. For purposes of this paragraph, the term:

a. "Identification and location information" means the:

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(I) Home address, telephone number, and date of birth of a servicemember, and the telephone number associated with a servicemember's personal communication device.

(II) Home address, telephone number, date of birth, and place of employment of the spouse or dependent of a servicemember, and the telephone number associated with such spouse's or dependent's personal communication device.

(III) Name and location of a school attended by the spouse of a servicemember or a school or day care facility attended by a dependent of a servicemember.

b. "Servicemember" means a current or former member of the Armed Forces of the United States, a reserve component of the Armed Forces of the United States, or the National Guard, who was deployed to an Overseas Contingency Operation of the United States Department of Defense ~~served~~ after September 11, 2001.

c. "Overseas Contingency Operation" means overseas military operations such as crisis response, infrastructure and coalition support for operations in Iraq and Afghanistan, humanitarian assistance in the Middle East and North Africa, and embassy security, as well as other needs abroad in the Global War on Terrorism.

2. Identification and location information held by an agency is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if a servicemember submits to an agency that has custody of the identification and location information:

a. A written request to exempt the identification and location information from public disclosure; ~~and~~

b. A copy of the servicemember's United States Department of Defense form DD-214 or a statement from the servicemember's

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commander that the servicemember served in an Overseas Contingency Operation after September 11, 2001; and

c. A written statement that the servicemember ~~he or she~~ has made reasonable efforts to protect the identification and location information from being accessible through other means available to the public.

3. This exemption applies to identification and location information held by an agency before, on, or after the effective date of this exemption.

~~4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2020.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 119.071, F.S., which provides a public records exemption for the identification and location information of a servicemember who served after September 11, 2001, and the spouse and dependents of the servicemember; narrowing the exemption by requiring the servicemember to have been deployed to an Overseas Contingency Operation of the United States Department of Defense;

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revising and defining terms; requiring a servicemember to provide certain documentation to the custodial agency in order for his or her identification and location information to be subject to the exemption; removing the scheduled repeal of the exemption; providing an effective date.

By the Committees on Governmental Oversight and Accountability; and Military and Veterans Affairs and Space

585-02219-20 20207010c1

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 119.071, F.S., which provides a public records exemption for the identification and location information of servicemembers and the spouses and dependents of servicemembers; expanding the exemption by removing the requirement that a servicemember submit a written statement that reasonable efforts have been made to protect the information in order to claim the exemption; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Paragraph (k) of subsection (5) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(5) OTHER PERSONAL INFORMATION.—

(k)1. For purposes of this paragraph, the term:

a. "Identification and location information" means the:

(I) Home address, telephone number, and date of birth of a servicemember, and the telephone number associated with a servicemember's personal communication device.

(II) Home address, telephone number, date of birth, and place of employment of the spouse or dependent of a servicemember, and the telephone number associated with such

585-02219-20 20207010c1

spouse's or dependent's personal communication device.

(III) Name and location of a school attended by the spouse of a servicemember or a school or day care facility attended by a dependent of a servicemember.

b. "Servicemember" means a current or former member of the Armed Forces of the United States, a reserve component of the Armed Forces of the United States, or the National Guard, who served after September 11, 2001.

2. Identification and location information held by an agency is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if a servicemember submits to an agency that has custody of the identification and location information~~:~~

~~a.~~ a written request to exempt the identification and location information from public disclosure~~; and~~

~~b. A written statement that he or she has made reasonable efforts to protect the identification and location information from being accessible through other means available to the public~~.

3. This exemption applies to identification and location information held by an agency before, on, or after the effective date of this exemption.

4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025 ~~2020~~, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity to make identification and location information of current or former members of the Armed Forces of the United States, a reserve component of the Armed Forces of the United

States, or the National Guard, who served after September 11, 2001, and their spouses and dependents, exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution, regardless of whether such individuals made reasonable efforts to protect such information from being public. Servicemembers perform among the most critical, most effective, and most dangerous operations in defense of our nation's freedom. Terrorist groups continue to threaten servicemembers and their families and encourage terrorist sympathizers to harm servicemembers and their families within the United States. The Legislature finds that allowing public access to the identification and location information of current or former servicemembers and their families jeopardizes the safety of servicemembers, their spouses, and their dependents. The Legislature finds that protecting the safety and security of current or former members of the Armed Forces of the United States, a reserve component of the Armed Forces of the United States, or the National Guard, who served after September 11, 2001, and their spouses and dependents, outweighs any public benefit that may be derived from the public disclosure of the identification and location information.

Section 3. This act shall take effect October 1, 2020.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Military and Veterans Affairs and Space, *Chair*
Children, Families, and Elder Affairs
Commerce and Tourism
Environment and Natural Resources

JOINT COMMITTEE:
Joint Administrative Procedures Committee

SENATOR TOM A. WRIGHT
14th District

January 14, 2020

The Honorable Lizbeth Benacquisto
400, Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 7010 – OGSR/Servicemembers and the Spouses and Dependents of Servicemembers

Dear Chair Benacquisto:

Senate Bill 7010, relating to OGSR/Servicemembers and the Spouses and Dependents of Servicemembers has been referred to the Committee on Rules. I am requesting your consideration on placing SB 7010 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

Tom A. Wright

Tom A. Wright, District 14

cc: John B. Phelps, Staff Director of the Committee on Rules
Cynthia Futch, Administrative Assistant of the Committee on Rules

REPLY TO:
☐ 4606 Clyde Morris Blvd., Suite 2-J, Port Orange, Florida 32129 (386) 304-7630
☐ 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

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

BILL GALVANO
President of the Senate

DAVID SIMMONS
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 Rules

BILL:	SB 7014
INTRODUCER:	Banking and Insurance Committee
SUBJECT:	OGSR/Payment Instrument Transaction Information/Office of Financial Regulation
DATE:	February 17, 2020 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Palecki	Knudson		**BI Submitted as Committee Bill**
1.	Hackett	McVaney	GO	**Favorable**
2.	Palecki	Phelps	RC	**Favorable**

I. Summary:

SB 7014 amends s. 560.312, F.S., Florida Statutes, to save from repeal the current public records exemption for the payment instrument transaction information held by the Office of Financial Regulation's check cashing database, by removing the scheduled October 2, 2020 repeal date.

The bill continues to exempt from public disclosure information held by the Office of Financial Regulation pursuant to section 560.310, F.S., which identifies a licensee, payor, payee, or conductor.

The bill is not expected to impact state and local revenues and expenditures.

This bill takes effect October 1, 2020.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[1] The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[2]

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant

[1] FLA. CONST. art. I, s. 24(a).
[2] *Id*.

exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.[3] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[4] Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.[5]

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[6] The Florida Supreme Court has interpreted the statutory definition of "public record" to include "material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.[7]

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[8] A violation of the Public Records Act may result in civil or criminal liability.[9]

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.[10] The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.[11]

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[3] *See* Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020).
[4] *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).
[5] Section 119.01(1), F.S. Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[6] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."
[7] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc*., 379 So. 2d 633, 640 (Fla. 1980).
[8] Section 119.07(1)(a), F.S.
[9] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[10] FLA. CONST. art. I, s. 24(c).
[11] *Id*. *See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

General exemptions from the public records requirements are contained in the Public Records Act.[12] Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.[13]

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." Custodians of records designated as "exempt" are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.[14] Custodians of records designated as "confidential and exempt" may not disclose the record except under circumstances specifically defined by the Legislature.[15]

Open Government Sunset Review Act

The Open Government Sunset Review Act[16] (the Act) prescribes a legislative review process for newly created or substantially amended[17] public records or open meetings exemptions, with specified exceptions.[18] It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[19]

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.[20] An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;[21]
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;[22] or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.[23]

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[12] *See, e.g.*, s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).
[13] *See, e.g.*, s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).
[14] *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).
[15] *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).
[16] Section 119.15, F.S.
[17] An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.
[18] Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.
[19] Section 119.15(3), F.S.
[20] Section 119.15(6)(b), F.S.
[21] Section 119.15(6)(b)1., F.S.
[22] Section 119.15(6)(b)2., F.S.
[23] Section 119.15(6)(b)3., F.S.

The Act also requires specified questions to be considered during the review process.[24] In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.[25] If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.[26]

Check Cashing Database

The Office of Financial Regulation (OFR) supervises "check cashers," a type of money services business which the Florida Statutes defines as persons who "sell currency in exchange for payment instruments[27] received, except traveler's checks."[28] As the regulator and licensing authority, the OFR is responsible for administering and enforcing ch. 560, F.S., the Money Services Business Act. Check cashers are licensed under Part III of the Money Services Business Act, "Check Cashing and Foreign Currency Exchange."

Prior to the institution of the check cashing database, OFR licensees engaged in check cashing were required to maintain customer files on those customers cashing corporate or third-party payment instruments exceeding $1,000, and to maintain files for any payment instrument accepted having a face value of $1,000 or more. These files were required to include a copy of the customer's photo identification along with a customer thumbprint taken by the licensee. Licensees were required to maintain these files electronically, as prescribed by rule.[29] As regulator, the OFR reviewed these records pursuant to their examination authority.[30]

Due to concerns about the facilitation of workers' compensation premium fraud through money services businesses, in 2011 the Chief Financial Officer formed a Money Service Business Facilitated Workers' Compensation Work Group. This group, comprised of regulators (including the OFR), law enforcement, and industry stakeholders, was tasked with studying the issue. The

[24] Section 119.15(6)(a), F.S. The specified questions are:
- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

[25] *See generally* s. 119.15, F.S.
[26] Section 119.15(7), F.S.
[27] "Payment instrument" means "a check, draft, warrant, money order, travelers check, electronic instrument, or other instrument, payment of money, or monetary value whether or not negotiable. The term does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit." Section 560.103(29), F.S.
[28] Section 560.103(6), F.S.
[29] Section 560.310(1) and (2), F.S. (2012).
[30] Section 560.109(1)-(3), F.S. (2012). The OFR continues to review these records pursuant to their examination authority. *See* Section 560.109(1)-(3), F.S. (2019).

work group made a number of findings and recommendations, including the establishment of a statewide database that could be utilized by regulators and law enforcement to detect workers' compensation insurance fraud.[31] While licensees were already required by rule to keep substantially similar information in an electronic format that was "readily retrievable and capable of being exported" for examination purposes, the database was expected to generate real-time data that could be used proactively to quickly identify and detect this type of fraud.[32] The database was further expected to enable parties with a need for the information to make sound business decisions.[33]

In response to these findings, the Florida Legislature enacted CS/CS/HB 217 (2013), along with a public records exemption companion, CS/HB 7135 (2013).[34] CS/CS/HB 217 (2013) required the OFR to procure a real time, online check cashing database designed to store information submitted by licensees and "combat fraudulent check cashing activity."[35]

Since implementation of the database, licensees are required to submit certain transactional information to the OFR in addition to independently maintaining files pursuant to the preexisting record keeping requirements.[36] Licensees must submit the following transactional information to the OFR for inclusion in the database:

- Transaction date;
- Payor name as displayed on the payment instrument;
- Payee name as displayed on the payment instrument;
- Conductor[37] name, if different from the payee name;
- Amount of the payment instrument;
- Amount of currency provided;
- Type of payment instrument, which may include personal, payroll, government, corporate, third-party, or another type of instrument;
- Amount of the fee charged for cashing of the payment instrument;
- Branch or location where the payment instrument was accepted;
- The type of identification and identification number presented by the payee or conductor;
- Payee workers' compensation insurance policy number or exemption certificate number, if the payee is a business, and
- Such additional information as required by rule.[38]

When licensees submit this information, the OFR assumes custodianship of both personal financial information and private business transaction information. The Legislature found that

[31] A Report by the Money Service Business Facilitated-Workers' Compensation Fraud Work Group, available online at http://www.myfloridacfo.com/siteDocs/MoneyServiceBusiness/WC_MSBReport-Rec.pdf (last viewed January 9, 2020).
[32] *Id.*
[33] *Id.*
[34] Chapters 2013-139 and 2013-155, Laws of Florida.
[35] Section 560.310(4), F.S.
[36] Section 560.310(1), (2)(a)-(c), F.S. Further, licensees and authorized vendors must maintain such information for 5 years unless a longer period is required by other state or federal law. Section 560.1105, F.S. Willful failure to comply with records retention requirements is a felony of the third degree. Section 560.1105(4), F.S.
[37] "Conductor" means "a natural person who presents himself or herself to a licensee for purposes of cashing a payment instrument." Section 560.103(9), F.S.
[38] Section 560.310(2)(d), F.S.

public availability of such payment transaction information would reveal sensitive, personal financial information about payees and conductors which is traditionally private. The Legislature also found that the public release of payment instrument transaction information identifying licensees or payors may reveal private business transaction information that could be used by competitors to harm one another in the marketplace. Thus, the Legislature found it to be a public necessity that payment transaction information held by the OFR in the database which identifies a licensee, payor, payee, or conductor be confidential and exempt from public records disclosure requirements.[39]

The confidential and exempt information remains accessible under certain circumstances; licensees may access the information they submit, and the OFR is authorized to enter into information sharing agreements with the Department of Financial Services, law enforcement agencies, and other governmental agencies in order to detect and deter financial crimes and workers' compensation violations.[40] Agencies receiving the confidential and exempt information must maintain the confidentiality of such information, unless a court order compels production.[41] In addition, the federal Bank Secrecy Act and U.S. Treasury regulations require financial institutions, including money services businesses like check cashers, to file currency transaction reports for any cash transaction over $10,000 a day.[42] Florida law requires money services businesses, and thus, check cashers, to comply with these requirements.[43]

This public records exemption, as enacted in 2013, was subject to the Open Government Sunset Review Act and scheduled for automatic repeal on October 2, 2018, unless reenacted. However, in 2018 the Legislature extended this repeal date to October 2, 2020, in conjunction with an amendment to s. 560.312, F.S., which clarified that the OFR was authorized to release payment transaction information in the aggregate, so long as the information released did not reveal information identifying a licensee, payor, payee, or conductor.[44] Thus, this exemption will sunset on October 2, 2020, unless saved from repeal by the Legislature.

OGSR Survey and Results

In September of 2019, Professional Staff of the Senate Banking and Insurance Committee submitted a questionnaire to the OFR to ascertain whether the public records exemption in s. 560.312, F.S., remains necessary.[45] Section 560.312, F.S., makes confidential and exempt from the public records disclosure requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution the payment instrument transaction information held by the OFR's check cashing database which identifies a licensee, payor, payee, or conductor. Staff reviewed OFR's responses to the questions to be considered by the Legislature in accordance with s. 119.15(6)(a), F.S.

As part of their response to the questionnaire, the OFR affirmed the legislative findings of public necessity that accompanied the enactment of the exemption. These findings indicated that public

[39] Chapter 2013-155, Laws of Florida.
[40] Section 560.312(2), F.S.
[41] *Id*.
[42] 31 U.S.C. ss. 5311-5330 and 31 C.F.R. s. 103.22.
[43] Section 560.123, F.S.
[44] Chapter 2018-116, Laws of Florida.
[45] See survey correspondence dated October 2, 2019, on file with the Senate Committee on Banking and Insurance.

availability of payment instrument transaction information would reveal sensitive, personal financial information about payees and conductors who use check cashing programs, including paycheck amounts, salaries, and business activities, as well as information regarding the financial stability of these persons. These findings noted that such information is traditionally private and sensitive, and that protecting the confidentiality of information identifying these payees and conductors would provide adequate protection for these persons while still providing public oversight of the program. Further, public release of payment instrument transaction information would identify licensees or payors, and reveal private business transaction information that is traditionally private and could be used by competitors to harm other licensees or payors in the marketplace. The Legislature noted that if such information were publicly available, competitors could determine the amount of business conducted by other licensees or payors. Additionally, the OFR indicated that the exemption was still necessary to protect the identities of individuals appearing in the database from undue risk to their reputations and safety, and to protect the confidential business information related to competition.

The OFR indicated it has received public records requests for the exempted records, and did not release the information. The OFR did, however, indicate that it had released such records pursuant to exceptions to the exemption, such as through information-sharing agreements with other governmental agencies and responses to subpoenas and court orders.[46] The OFR stated that all records released under such circumstances were released pursuant to the terms of a memorandum of understanding, and when released electronically, were sent via an encrypted connection. The OFR stated that the exempted records are not readily available via alternative means, and are not protected by another exemption.

The OFR recommends reenacting the public records exemption without changes. Additionally, the OFR indicated that this exemption protects Florida consumers' financial and identification records from potentially being used for illicit purposes, and cautioned that repeal may expose personal identifying information to a significant risk of identity theft.

III. Effect of Proposed Changes:

Section 1 removes the scheduled repeal on October 2, 2020, of s. 560.312, F.S., which makes confidential and exempt from the disclosure requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution the payment instrument transaction information held by the OFR's check cashing database pursuant to s. 560.310, F.S., which identifies a licensee, payor, payee, or conductor.

Section 2 provides an effective date of October 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities

[46] Section 560.312(2)(a) and (b), F.S.

have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill continues a current public records exemption beyond its current date of repeal. The bill does not create or expand an exemption. Thus, the bill does not require an extraordinary vote for enactment.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill continues a current public records exemption without expansion. Thus, a statement of public necessity is not required.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect sensitive, personal financial information about payees and conductors who use check cashing programs, along with private business transaction information that could be used by competitors to harm other licensees or payors in the marketplace. Both types of records are sensitive and traditionally private. This bill exempts only payment instrument transaction information held by the OFR's check cashing database pursuant to s. 560.310, F.S., which identifies a licensee, payor, payee, or conductor from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Licensees, payors, payees, and conductors would continue to have their personal financial information and business transaction information protected.

C. Government Sector Impact:

The exemption will continue to allow the OFR, other governmental agencies, and law enforcement to access real time data to aid in the prevention of fraud.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 560.312 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By the Committee on Banking and Insurance

597-02044-20 20207014__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 560.312, F.S., relating to an exemption from public records requirements for certain payment instrument transaction information held by the Office of Financial Regulation; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 560.312, Florida Statutes, is amended to read:

560.312 Database of payment instrument transactions; confidentiality.—

(1) Payment instrument transaction information held by the office pursuant to s. 560.310 which identifies a licensee, payor, payee, or conductor is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(2)(a) A licensee may access information that it submits to the office for inclusion in the database.

(b) The office, to the extent permitted by state and federal law, may enter into information-sharing agreements with the department, law enforcement agencies, and other governmental agencies and, in accordance with such agreements, may provide the department, law enforcement agencies, and other governmental agencies with access to information contained in the database for use in detecting and deterring financial crimes and workers' compensation violations, pursuant to chapter 440. Any department

597-02044-20 20207014__

or agency that receives confidential information from the office under this paragraph must maintain the confidentiality of the information, unless, and only to the extent that, a court order compels production of the information to a specific party or parties.

(3) The office may release payment instrument transaction information in the aggregate, so long as the information released does not reveal information that identifies a licensee, payor, payee, or conductor.

~~(4) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2020.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 344
INTRODUCER:	Judiciary Committee and Senator Bradley
SUBJECT:	Courts
DATE:	February 17, 2020
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	**Fav/CS**
2.	Hendon	Hendon	CF	**Favorable**
3.	Davis	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 344 clarifies ambiguities in current law to better enable public guardians to meet the needs of their incapacitated wards. The bill clarifies that public guardians are exempt from paying any court-related fees or charges for accessing public records. The bill requires courts to waive court costs and filing fees in proceedings involving the appointment of a public guardian or the estate of a public guardian's ward.

Finally, the bill allows a physician assistant or advanced practice registered nurse to complete a ward's annual medical evaluation and prepare and sign the report for the court, when the physician delegates that responsibility. Currently, only physicians are allowed to conduct the annual medical exams and prepare the reports.

The bill may have an insignificant fiscal impact on the clerks of court and takes effect July 1, 2020.

II. Present Situation:

Public Guardians

A public guardian is appointed to provide guardianship services to an incapacitated person if there is no family member, friend, or other person willing and qualified to serve.[1] Public guardians generally and primarily serve incapacitated people who have limited financial means.[2,3]

According to the Department of Elder Affairs, which houses the Office of Public and Professional Guardians, the 17 public guardian programs in the state served 3,816 wards in Fiscal Year 2018-19.[4] A program cost and activities report issued in March, 2019, stated that 42% of wards lived in nursing facilities, 23% lived in assisted living facilities, 15% lived in group homes, 6% were in hospitals, 6% lived in intermediate care facilities, and 4% were cared for in private homes. The remaining wards, who account for less than 4% of that population, were cared for in other living arrangements.[5]

Clerks of Court Duty to Provide Access to Public Records and Waive Fees

The clerks of court are required by s. 28.345(1), F.S., to provide public guardians and other entities access to public records, upon request.[6] Additionally, s. 28.345(2), F.S., exempts a public guardian, when acting in an official capacity, from all court-related fees and charges normally assessed by the clerks.[7] While these two provisions make clear that public guardians are entitled to free access to public records and that no fees or charges will be assessed against them for those records, the peculiar wording of s. 28.345(3), F.S., has created confusion among some clerks in the state.

Section 28.345(3), F.S. states that the exemptions from fees or charges "apply only to state agencies and state entities and the party represented by the agency or entity." Several circuit court clerks have determined that public guardians are not state agencies or state entities, and are therefore required to pay the fees or charges for the public records they request. Other circuits read the statute differently and do not charge fees to the public guardians.

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[1] Section 744.2007(1), F.S.
[2] Section 744.2007(3), F.S.
[3] The Executive Director of the Office of Public and Professional Guardians, after consulting the chief judge and other circuit judges and appropriate people, may establish an office of public guardian within a county or judicial circuit and provide a list of people best qualified to serve as public guardian. Section 744.2006, F.S.
[4] Telephone interview with Scott Read, Legislative Affairs Director for the Department of Elder Affairs, in Tallahassee, Fla. (October 31, 2019).
[5] Pamela B. Teaster, Wen You, and Saman Mohsenirad, *Florida Public Guardian Programs: Program Costs and Activities, Report for the Office of Public and Professional Guardians, Florida Department of Elder Affairs* (March 2019) (on file with the Senate Committee on Judiciary).
[6] Those additional entities include the state attorney, public defender, guardian ad litem, attorney ad litem, criminal conflict and civil regional counsel, and private court-appointed counsel paid by the state, and to authorized staff acting on their behalf Section 28.345(1), F.S.
[7] Court-related fees and charges are also waived for judges and court staff acting on their behalf as well as state agencies. Section 28.345(2), F.S.

Court Discretion to Waive Costs and Filing Fees for Matters Involving Public Guardians

Florida's extensive guardianship laws are contained in ch. 744, F.S. The provisions dealing with the costs of public guardians provide that all costs of administration, including filing fees, shall be paid from the budget of the office of the public guardian and no costs of administration, including filing fees, shall be recovered from the assets or income of a ward.[8] An additional statute provides that a court may waive any court costs or filing fees in any proceeding for appointment of a public guardian or in any proceeding involving the estate of a ward with a public guardian.[9] The court's ability to waive fees is permissive and not mandatory, such that the decision to impose or waive fees rests with the discretion of the court.

Annual Guardianship Plan and Physician's Report

Each guardian of the person must file with the court an annual guardianship plan that updates information about the ward's condition, including the ward's current needs and how those needs will be met in the coming year.[10] The plan for an adult ward, if applicable, must include certain information concerning medical and mental health conditions as well as treatment and rehabilitation needs of the ward including:

- A list of any professional medical treatment received during the preceding year.
- A report by a physician who examined the ward at least 90 days before the beginning of the reporting period which contains an evaluation of the ward's condition and current capacity.
- The plan for providing medical, mental health, and rehabilitative services for the coming year.[11]

As noted above, the majority of public guardians' wards live in facilities where physicians seldom visit. However, because the statute specifically requires a physician's report, courts will not accept the signature of a physician's assistant or an advanced practice registered nurse even though these professionals appear to be authorized to conduct these examinations within the scope of their practices.

III. Effect of Proposed Changes:

Clarifying Language for Court-related Fees and Charges

The bill clarifies s. 28.345(3), F.S., so that public guardians are exempt from the clerks' assessment of fees and charges. This is accomplished by stating that the "entities listed in subsections (1) and (2)," the provisions where public guardians are specifically named, are exempted from fees or charges. This should resolve any ambiguity as to whether the public guardians are exempt from the fees and charges normally assessed by the clerks of courts.

[8] Section 744.2008(1), F.S.
[9] Section 744.2008(2), F.S.
[10] Section 744.3675, F.S.
[11] Section 744.3675(1)(b), F.S.

Court's Discretion to Waive Court Costs and Filing Fees

The bill amends s. 744.2008(1), F.S., to clarify that filing fees will not be assessed against a public guardian as a cost of administration. By deleting the phrase "including filing fees" the language makes clear that filing fees are not to be charged against the public guardian, which is consistent with the changes made to s. 28.345(3), F.S., If the phrase remained in the statute, it could create ambiguity as to whether filing fees may be assessed.

The bill amends s. 744.2008(2), F.S., to require a court to waive any costs or filing fees in proceedings for the appointment of a public guardian or in a proceeding involving the estate of a ward with a public guardian. Courts will be prohibited from imposing costs or filing fees under those circumstances.

Annual Guardianship Plan and Physician's Report

The requirements for the annual guardianship plan that details a ward's needs and how those needs will be met is amended to expand the type of medical professionals who may be involved. If a guardian requests a ward's physician to complete the medical evaluation and prepare the report and the physician delegates that responsibility, a physician assistant or an advanced practice registered nurse may complete the examination and prepare and sign the report. The physician assistant must be acting pursuant to s. 458.347(4)(h), F.S., or s. 459.022(4)(g), F.S., by performing services delegated by a supervising physician in the physician assistant's practice in accordance with his or her education and training, unless expressly prohibited by law or rule. The advanced practice registered nurse must operate within an established protocol and on site where the advanced practice registered nurse practices.[12]

By increasing the type of medical professionals who may complete the examination and determine a ward's level of capacity for the annual report, the public guardian will be better able to meet the ward's needs and comply with the requirements of the guardianship statutes.

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[12] The advanced practice registered nurse may prescribe, dispense, or administer certain drugs, initiate appropriate therapies, perform additional functions as permitted by rule, order diagnostic tests and therapies, and order medications for administration to a patient in certain facilities. Section 464.012 (3), F.S.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill will reduce the collection of public record fees and filing fees by clerks of court. The amount is expected to be insignificant.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Florida Clerks of Court Operations Corporation (CCOC) monitors clerk budgets and states in its fiscal summary[13] that the bill will have a slight indeterminate negative fiscal impact for some clerks who currently charge filing fees based on their interpretation of a statute requiring public guardians to pay filing fees from the budget of the office of public guardian.[14] The CCOC estimates the impact of the bill will be relatively small because many of the public guardian filings are accompanied by an affidavit demonstrating indigency such that most clerks currently waive those filing fees.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 28.345, 744.2008, and 744.3675.

[13] Florida Clerks of Court Operations Corporation, *Senate Bill 344 Fiscal Analysis*, (Oct. 2019) available at http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=29337.

[14] Section 744.2008(1), F.S., provides that "All costs of administration, including filing fees, shall be paid from the budget of the office of public guardian. No costs of administration, including filing fees, shall be recovered from the assets or the income of the ward."

IX. Additional Information:

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

CS by Judiciary on November 5, 2019:
The committee substitute differs from the underlying bill by:

- Deleting a reference to filing fees in s. 744.2008(1), F.S., that could create ambiguity as to whether clerks may charge public guardians for filing fees; and
- Clarifying that a physician assistant or advanced practice nurse practitioner may complete the ward's annual exam and prepare and sign the report when those responsibilities are delegated by the ward's physician in s. 744.3675(1)2., F.S.

B. Amendments:

None.

By the Committee on Judiciary; and Senator Bradley

590-01185-20 2020344c1

A bill to be entitled

An act relating to courts; amending s. 28.345, F.S.; specifying that certain exemptions from court-related fees and charges apply to certain entities; amending s. 744.2008, F.S.; requiring the court to waive any court costs or filing fees for certain proceedings involving public guardians; amending s. 744.3675, F.S.; providing that certain examinations may be performed and reports prepared by a physician assistant or an advanced practice registered nurse under certain circumstances; providing an effective date.

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

Section 1. Section 28.345, Florida Statutes, is amended to read:

28.345 State access to records; exemption from court-related fees and charges.—

(1) Notwithstanding any other provision of law, the clerk of the circuit court shall, upon request, provide access to public records without charge to the state attorney, public defender, guardian ad litem, public guardian, attorney ad litem, criminal conflict and civil regional counsel, and private court-appointed counsel paid by the state, and to authorized staff acting on their behalf. The clerk of court may provide the requested public record in an electronic format in lieu of a paper format if the requesting entity is capable of accessing such public record electronically.

590-01185-20 2020344c1

(2) Notwithstanding any other provision of this chapter or law to the contrary, judges and those court staff acting on behalf of judges, state attorneys, guardians ad litem, public guardians, attorneys ad litem, court-appointed private counsel, criminal conflict and civil regional counsel, public defenders, and state agencies, while acting in their official capacity, are exempt from all court-related fees and charges assessed by the clerks of the circuit courts.

(3) The exemptions from fees or charges provided in this section apply only to entities listed in subsections (1) and (2), state agencies and state entities, and the party represented by the agency or entity.

Section 2. Section 744.2008, Florida Statutes, is amended to read:

744.2008 Costs of public guardian.—

(1) All costs of administration~~, including filing fees,~~ shall be paid from the budget of the office of public guardian. No costs of administration, including filing fees, shall be recovered from the assets or the income of the ward.

(2) In any proceeding for appointment of a public guardian, or in any proceeding involving the estate of a ward for whom a public guardian has been appointed guardian, the court shall ~~may~~ waive any court costs or filing fees.

Section 3. Paragraph (b) of subsection (1) of section 744.3675, Florida Statutes, is amended to read:

744.3675 Annual guardianship plan.—Each guardian of the person must file with the court an annual guardianship plan which updates information about the condition of the ward. The annual plan must specify the current needs of the ward and how

those needs are proposed to be met in the coming year.

(1) Each plan for an adult ward must, if applicable, include:

(b) Information concerning the medical and mental health conditions and treatment and rehabilitation needs of the ward, including:

1. A resume of any professional medical treatment given to the ward during the preceding year.

2. The report of a physician who examined the ward no more than 90 days before the beginning of the applicable reporting period. <u>If the guardian has requested a physician to complete the examination and prepare the report and the physician has delegated that responsibility, the examination may be performed and the report may be prepared and signed by a physician assistant acting pursuant to s. 458.347(4)(h) or s. 459.022(4)(g), or by an advanced practice registered nurse acting pursuant to s. 464.012(3).</u> The report must contain an evaluation of the ward's condition and a statement of the current level of capacity of the ward.

3. The plan for providing medical, mental health, and rehabilitative services in the coming year.

Section 4. This act shall take effect July 1, 2020.

THE FLORIDA SENATE

APPEARANCE RECORD

2-19-20 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 344

Meeting Date *Bill Number (if applicable)*

Topic SB 344 *Amendment Barcode (if applicable)*

Name Bryan Cherry

Job Title Consultant

Address 150 S. Monroe St. STE 303 Phone (850) 544-5673

Street

Tall. FL. 32301 Email bryan@pinpointresults.com

City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information Waive Speaking: ☑ In Support ☐ Against

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

Representing FL. Public Guardian Coalition

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/19/2020
Meeting Date

SB 344
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Courts

Name Zayne smith

Job Title Associate State Director

Address 215 South Monroe Suite 603
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850.228.4243

Email zsmith@aarp.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing AARP

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-19-20
Meeting Date

344
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic _____

Name Greg Pound

Job Title _____

Address 9166 Sunrise Dr.
Street

Largo FL. 33773
City *State* *Zip*

Phone _____

Email _____

Speaking: ☐ For ☐ Against ☒ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 1490
INTRODUCER:	Governmental Oversight and Accountability Committee and Senator Bradley and others
SUBJECT:	Public Officers and Employees
DATE:	February 17, 2020 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Mitchell	Roberts	EE	**Favorable**
2.	McVaney	McVaney	GO	**Fav/CS**
3.	Mitchell	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1490 amends the Florida Code of Ethics and the Legislative Branch Expenditure Ban to allow a state employee to receive gifts or compensation in certain circumstances.

The Florida Code of Ethics and other statutory gift bans prohibit a number of state employees from receiving gifts or donations, no matter the purpose of the funds. The bill allows gifts or compensation, regardless of value, to be accepted by the following, so long as the employee or official, or his or her child, has suffered serious bodily injury or has been diagnosed with a serious disease or illness:

- A non-elected state employee or agency official required, pursuant to Article II, section 8 of the Florida Constitution or s. 112.3145, F.S., to file full or limited public disclosure of his or her financial interests;
- A state procurement employee; or
- A legislative employee.

The bill requires any gift or compensation to be used toward expenses directly incurred, or in connection with, the care and treatment of the employee or official, or his or her child. The reporting requirements of s. 112.3148, F.S., apply to any such gifts.

The bill is not expected to impact state revenues or expenditures.

The bill takes effect on July 1, 2020.

II. Present Situation:

Public Employee Gifts

Gifts to public officers and employees are regulated pursuant to s. 112.3148, F.S. "Gift" is defined in s. 112.312(12)(a), (b), (c), and (d), F.S., and encompasses nearly anything of value. Under s. 112.3148, F.S., a reporting individual or procurement employee is prohibited from soliciting any gift from a vendor doing business with the reporting individual's or procurement employee's agency, a political committee, a lobbyist who lobbies the reporting individual's or procurement employee's agency, or an employer, principal, partner or firm of such lobbyist where such gift is for the personal benefit of the reporting individual or procurement employee, another reporting individual or procurement employer, or any member of the immediate family of a reporting individual or procurement employee.

A "reporting individual" is anyone who is required to file financial disclosure, including candidates.[1] A "procurement employee" is an employee of an officer, department, board, commission, or council of the executive or judicial branch of state government who participates through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, or auditing or in any other advisory capacity in the procurement of contractual services or commodities as defined in s. 287.012, F.S., if the cost of such services or commodities exceeds $10,000 in any year.[2]

Additionally, a reporting individual or procurement employee is prohibited from knowingly accepting a gift from a vendor doing business with the reporting individual's or procurement employee's agency, a political committee, a lobbyist, or an employer, principal, partner or firm of a lobbyist if the gift is valued over $100. A vendor doing business with the reporting individual's or procurement employee's agency; a political committee; a lobbyist who lobbies the reporting individual's or procurement employee's agency; the partner, firm, principal, or employer of such lobbyist; or another on behalf of the lobbyist or partner, firm, principal, or employer of the lobbyist is prohibited from giving, either directly or indirectly, a gift that has a value in excess of $100 to the reporting individual or procurement employee or any other person on his or her behalf.

If a vendor, political committee, lobbyist, or an employer, principal, partner or firm of a lobbyist gives a gift valued between $25 and $100 to a reporting individual or procurement employee, the donor of the gift is required to report the gift on a quarterly basis using a CE Form 30.

Each reporting individual or procurement employee must file a statement (Form 9, Quarterly Gift Disclosure) with the Commission on Ethics not later than the last day of each calendar quarter, for the previous calendar quarter, containing a list of gifts which he or she believes to be in excess of $100 in value, if any, accepted by him or her, for which compensation was not provided by the donee to the donor within 90 days of receipt of the gift to reduce the value to $100 or less. Gifts from relatives, gifts prohibited from being accepted, and gifts required to be

[1] Section 112.3148(2)(d), F.S.
[2] Section 112.3148(2)(e), F.S.

disclosed elsewhere are not reported on Form 9. The form need not be filed if no such gift was received during the calendar quarter.[3]

Gifts from Certain Political Committees

Political committees are statutory entities authorized in s. 106.03, F.S., to engage in certain political activities. Currently, s. 112.3148, F.S., prohibits a reporting individual or procurement employee from soliciting a "gift" from a political committee. "Gift" is defined in s. 112.312(12)(a), (b), (c), and (d), F.S., and encompasses nearly anything of value. However, there are some items in that definition which are specifically excluded from the definition of "gift," the most significant of which is a campaign contribution or expenditure regulated by ch. 106, F.S., and/or federal law.[4]

Current law also prohibits a reporting individual or procurement employee from accepting anything over $100 in value. If a reporting individual or procurement employee accepts a "gift" valued less than $100, but greater than $25, the political committee must disclose the gift by filing a CE Form 30 with the Florida Commission on Ethics.

Legislative Branch Expenditure Ban

Section 11.045, F.S., contains provisions requiring legislative lobbying registration and legislative lobbyist compensation reports, and it contains the "Legislative Branch Expenditure Ban." Section 11.045(4)(a), F.S., provides in pertinent part, that "no lobbyist or principal shall make, directly or indirectly, and no member or employee of the legislature shall knowingly accept, directly or indirectly, any expenditure, except floral arrangements or other celebratory items given to legislators and displayed in chambers the opening day of a regular session."

A "principal" is defined as "the person, firm, corporation, or other entity which has employed or retained a lobbyist."[5] For purposes of this statute, the term "expenditure" means a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying. The term does not include contributions or expenditures reported pursuant to chapter 106 or federal election law, campaign-related personal services provided without compensation by individuals volunteering their time, any other contribution or expenditure made by or to a political party or affiliated party committee, or any other contribution or expenditure made by an organization that is exempt from taxation under 26 U.S.C. s. 527 or s. 501(c)(4).[6] The term "lobbying" means "influencing or attempting to influence legislative action or nonaction through oral or written communication or an attempt to obtain the goodwill of a member or employee of the Legislature."[7]

The following penalties can be imposed for violation of the Legislative Branch Expenditure Ban:
- A fine of not more than $5,000;
- Reprimand;

[3] Section 112.3148(8), F.S.
[4] Section 112.312(12)(b)2., F.S.
[5] Section 11.045(1)(i), F.S.
[6] Section 11.045(1)(c), F.S.
[7] Section 11.045(1)(e), F.S.

- Censure;
- Probation; or
- Prohibition on lobbying for a period not to exceed 24 months.[8]

Executive Branch Expenditure Ban

The "Executive Branch Expenditure Ban" is found in s. 112.3215, F.S. That section is the sister provision to the "Legislative Branch Expenditure Ban" in s. 11.045, F.S. The "Executive Branch Expenditure Ban" requires individuals to register with the Commission on Ethics prior to engaging in lobbying the executive branch. Each lobbying firm is required to make certain disclosures and is required to maintain records corroborating those disclosures.[9]

Under the "Executive Branch Expenditure Ban," an official, member, or employee of the executive branch is prohibited from soliciting or accepting, directly or indirectly, an expenditure from a lobbyist or principal.[10] For purposes of this prohibition, the terms "agency official" or "employee" mean any individual who is required by law to file full or limited public disclosure of his or her financial interests. For purposes of this prohibition, the term "expenditure" means a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying. The term "expenditure" does not include contributions or expenditures reported pursuant to ch. 106, F.S., or federal election law, campaign-related personal services provided without compensation by individuals volunteering their time, any other contribution or expenditure made by or to a political party or an affiliated party committee, or any other contribution or expenditure made by an organization that is exempt from taxation under 26 U.S.C. s. 527 or s. 501(c)(4). A lobbying firm is subject to a fine of up to $5,000 for violating the "Executive Branch Expenditure Ban."[11]

Cumulative Effects

The effect of these statutory gift bans is to reduce significantly the universe of donors a state employee could receive financial assistance from in the event of catastrophic medical expenses necessitated by the treatment of severe illness or injury.

III. Effect of Proposed Changes:

SB 1490 amends the Florida Code of Ethics and the Legislative Branch Expenditure Ban to allow a state employee to receive gifts or compensation in certain circumstances.

Section 1 amends s. 112.3148, F.S., which prohibits the receipt of gifts by individuals filing full or limited public disclosure of financial interests and by procurement employees.[12] This section allows a reporting individual, not including any elected officer, or a procurement employee to accept any gift or compensation, regardless of value, if the reporting individual or procurement employee, or his or her child, has suffered serious bodily injury or has been diagnosed with a

[8] Section 11.045(7), F.S
[9] Section 112.3215(5), F.S.
[10] Section 112.3215(6)(a), F.S.
[11] Section 112.3215(10), F.S.
[12] Section 112.3148, F.S.

serious disease or illness. This section also allows a person to give the gift to the reporting individual or procurement employee.

The term "serious bodily injury" is defined to mean an injury that consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of a bodily member or organ and requires care and treatment for an extended period of time. The term "serious disease or illness" is defined to mean any disease or illness, including cancer, which causes significant functional impairment requiring care and treatment for an extended period of time.

Any gift or compensation must be used toward expenses directly incurred, or in connection with, the care and treatment of the reporting individual, procurement employee, or child. Reporting requirements of s. 112.3148, F.S., apply to any such gifts.

Section 2 amends s. 11.045, F.S., relating to the Legislative Branch Expenditure Ban, to allow a lobbyist or principal to make, and a legislative employee to accept, an expenditure for a donation toward the care and treatment of a serious bodily injury or a serious disease or illness of the employee or his or her child. Any such expenditure must be in accordance with the same requirements and limitations governing the receipt of such gifts added in section 1 of the bill.

In like fashion, **section 3** amends s. 112.3215, F.S., relating to the Executive Branch Expenditure Ban, to allow a lobbyist or principal to make, and a nonelected agency official or employee[13] to accept, an expenditure for a donation toward the care and treatment of a serious bodily injury or a serious disease or illness of the official or employee or his or her child. Any such expenditure must be in accordance with the same requirements and limitations governing the receipt of such gifts added in section 1 of the bill.

The bill takes effect on July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[13] For purposes of this section, these terms refer to an individual who is required by law to file full or limited public disclosure of his or her financial interests. See s. 112.3215(1)(b), F.S.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 112.3148, 11.045, and 112.3215 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 Governmental Oversight and Accountability on February 3, 2020:
The CS clarifies that a person is permitted to give the gift to the reporting individual or procurement officer for the permitted purpose.

B. Amendments:

None.

By the Committee on Governmental Oversight and Accountability; and Senators Bradley, Broxson, Farmer, Bracy, and Rader

585-03007-20 20201490c1

A bill to be entitled

An act relating to public officers and employees; amending s. 112.3148, F.S.; defining terms; authorizing the giving, solicitation, and acceptance of gifts or compensation to be used toward costs incurred due to a serious bodily injury or the diagnosis of a serious disease or illness of specified reporting individuals, procurement employees, or a child thereof; specifying limitations and requirements; amending ss. 11.045 and 112.3215, F.S.; revising provisions regarding prohibited lobbying expenditures in the legislative and executive branches to conform to changes made by the act; providing an effective date.

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

Section 1. Present subsections (9) and (10) of section 112.3148, Florida Statutes, are renumbered as subsections (10) and (11), respectively, and a new subsection (9) is added to that section, to read:

112.3148 Reporting and prohibited receipt of gifts by individuals filing full or limited public disclosure of financial interests and by procurement employees.—

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

1. "Serious bodily injury" means an injury that consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of a bodily member or organ and requires care

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and treatment for an extended period of time.

2. "Serious disease or illness" means any disease or illness, including cancer, which causes significant functional impairment requiring care and treatment for an extended period of time.

(b) Notwithstanding the limitations established in this section, a vendor doing business with the reporting individual's or procurement employee's agency; a lobbyist who lobbies a reporting individual's or procurement employee's agency; the partner, firm, employer, or principal of a lobbyist; or another person on behalf of the lobbyist or partner, firm, principal, or employer of the lobbyist may provide, and a reporting individual, not including any elected officer, or a procurement employee may solicit or accept, any gift or compensation, regardless of value, if the reporting individual or procurement employee, or his or her child, has suffered serious bodily injury or has been diagnosed with a serious disease or illness. Any gift or compensation accepted pursuant to this subsection must be used toward expenses directly incurred, or in connection with, the care and treatment of the reporting individual, procurement employee, or a child thereof. The reporting requirements under this section apply to any gift made pursuant to this subsection.

Section 2. Paragraph (a) of subsection (4) of section 11.045, Florida Statutes, is amended to read:

11.045 Lobbying before the Legislature; registration and reporting; exemptions; penalties.—

(4)(a) Notwithstanding s. 112.3148, s. 112.3149, or any other provision of law to the contrary, no lobbyist or principal

shall make, directly or indirectly, and no member or employee of the Legislature shall knowingly accept, directly or indirectly, any expenditure, except floral arrangements or other celebratory items given to legislators and displayed in chambers the opening day of a regular session. However, a lobbyist or principal may make, and an employee of the Legislature may accept, an expenditure for a donation toward the care and treatment of a serious bodily injury or a serious disease or illness of the employee, or a child thereof, in accordance with the requirements and limitations of s. 112.3148(9).

Section 3. Paragraph (a) of subsection (6) of section 112.3215, Florida Statutes, is amended to read:

112.3215 Lobbying before the executive branch or the Constitution Revision Commission; registration and reporting; investigation by commission.—

(6)(a) Notwithstanding s. 112.3148, s. 112.3149, or any other provision of law to the contrary, no lobbyist or principal shall make, directly or indirectly, and no agency official, member, or employee shall knowingly accept, directly or indirectly, any expenditure. However, a lobbyist or principal may make, and a nonelected agency official or employee may accept, an expenditure for a donation toward the care and treatment of a serious bodily injury or a serious disease or illness of the official or employee, or a child thereof, in accordance with the requirements and limitations of s. 112.3148(9).

Section 4. This act shall take effect July 1, 2020.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/19/20
Meeting Date

1490
Bill Number (if applicable)

Topic Gift Ban Exemption for State Employees

Amendment Barcode (if applicable)

Name Ryan Wiggins

Job Title

Address 1771 E. Mallory St.
Street

Pensacola, FL 32503
City *State* *Zip*

Phone 850-728-1521

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/19/20
Meeting Date

1490
Bill Number (if applicable)

Topic Gift ban

Amendment Barcode (if applicable)

Name ALEXIS LAMBERT

Job Title

Address
Street

Phone

Email

City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-19-20
Meeting Date

1490
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Greg Pound

Job Title Savingfamilies

Address 9166 Sunrise Dr.
Street

Phone _____

_____
City *State* *Zip*

Email _____

Speaking: ☐ For ☐ Against ☒ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 1286
INTRODUCER:	Judiciary Committee; Criminal Justice Committee; and Senator Simmons
SUBJECT:	Contraband in Specified Facilities
DATE:	February 19, 2020 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stokes	Jones	CJ	**Fav/CS**
2.	Ravelo	Cibula	JU	**Fav/CS**
3.	Stokes	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1286 revises the list items that are contraband on the grounds of state correctional institutions, county detention facilities, juvenile detention facilities, juvenile commitment programs, and facilities operated by the Department of Children and Families (DCF), and the Agency for Persons with Disabilities (APD).

With respect to all facilities, medical marijuana, hemp, and industrial hemp is considered contraband. Moreover, for all facilities, the bill adds vapor-generating electronic devices to the list of contraband items. With respect to facilities operated by APD or DCF, the bill adds cellular telephones and other portable communications devices to the list of contraband items.

The introduction of medical marijuana, hemp, or industrial hemp on the grounds of a state correctional institution, county detention facility, or facility operated by the DCF or the APD is a third degree felony. The introduction of these items on the grounds of a juvenile detention facility or commitment program is a second degree felony.

The intentional and unlawful introduction of a cellular telephone or portable communications device inside the secure perimeter of a DCF or APD facility is a first degree misdemeanor. Finally, it is a first degree misdemeanor to intentionally and unlawfully introduce a vapor-generating electronic device into the secure perimeter of any facility.

The bill ranks the introduction of a firearm or deadly weapon, or a controlled substance, into a DCF listed facilities as a level 4 offense.

The Criminal Justice Impact Conference estimates the House companion to this bill, which is substantively similar, will have a "positive insignificant" prison bed impact (an increase of 10 or fewer prison beds). The Legislature's Office of Economic and Demographic Research preliminarily estimate of this bill is the same as the House companion bill. See Section V. Fiscal Impact Statement.

This bill is effective October 1, 2020.

II. Present Situation:

Introduction of contraband is prohibited from certain government operated facilities. Specifically, Florida law prohibits the introduction of contraband into state correctional institutions, county detention facilities, juvenile detention and commitment programs, and facilities operated by the DCF or the APD.[1]

Introduction of Contraband at State Correctional Institutions (State Prisons)

Section 944.47, F.S., provides that it is a third degree felony[2] to introduce into or on the grounds of a state correctional facility, any of the following items:

- Any written or recorded communication or any currency or coin given or transmitted, or intended to be given or transmitted, to any inmate.
- Any article of food or clothing given or transmitted, or intended to be given or transmitted, to any inmate.
- Any cellular telephone or other portable communication device intentionally and unlawfully introduced inside the secure perimeter of any state correctional institution without prior authorization or consent from the officer in charge of such correctional institution.[3]

A portable communication device is defined under this section as any device carried, worn, or stored which is designed or intended to receive or transmit verbal or written messages, access or store data, or connect electronically to the internet or any other electronic device and which allows communication in any form. Such devices include, but are not limited to, portable two-way pagers, hand-held radios, cellular telephones, Blackberry-type devices, personal digital assistants or PDA's, laptop computers, or any components of these devices which are intended to be used to assemble such devices. The term also includes any new technology that is developed for similar purposes. Excluded from this definition is any device having communication capabilities which has been approved or issued by the department for investigative or institutional security purposes or for conducting other state business.[4]

[1] Sections 916.1085, 944.47, 951.22, and 985.711, F.S.
[2] A third degree felony is punishable by up to five years in state prison and a fine not exceeding $5,000. Sections 775.082 and 775.083, F.S.
[3] Section 944.47(1)(a)1., 2., and 6., F.S.
[4] Section 944.47(1)(a)6., F.S.

Additionally, it is a second degree felony[5] for a person to introduce into or on the grounds of a state correctional facility, any of the following items:

- Any intoxicating beverage or beverage which causes or may cause an intoxicating effect.
- Any controlled substance as defined in s. 893.02(4), F.S., or any prescription or nonprescription drug having a hypnotic, stimulating, or depressing effect.
- Any firearm or weapon of any kind or any explosive substance.[6]

Introduction of Contraband at County Detention Facilities (County Jails)

Section 951.22, F.S., provides that it is a first degree misdemeanor[7] to introduce into or on the grounds of a county detention facility, any of the following items:

- Any written or recorded communication.[8]
- Any currency or coin.
- Any article of food or clothing.
- Any tobacco products.
- Any cigarette.
- Any cigar.
- Any intoxicating beverage or beverage that causes or may cause an intoxicating effect.[9]

Additionally, it is a third degree felony to introduce into or on the grounds of a county detention facility, one of the following items:

- Any narcotic, hypnotic, or excitative drug or drug of any kind or nature, including nasal inhalators, sleeping pills, barbiturates, and controlled substances as defined in s. 893.02(4), F.S.
- Any firearm or any instrumentality commonly used or intended to be a dangerous weapon.
- Any instrumentality of any nature which may be or is intended to be used as an aid in effecting or attempting to effect an escape from a county facility.
- Any cellular telephone or other portable communication device[10] as described in s. 944.47(1)(a)6., F.S.[11]

[5] A second degree felony is punishable by up to 15 years in state prison and a fine not exceeding $10,000. Sections 775.082 and 775.083, F.S.
[6] Section 944.47(1)(a)3.-5., F.S.
[7] A first degree misdemeanor is punishable by up to a year in county jail and a fine not exceeding $1,000. Sections 775.082 and 775.083, F.S.
[8] This does not apply to any document or correspondence exchanged between a lawyer, paralegal, or other legal staff and an inmate at a detention facility if the document or correspondence is otherwise lawfully possessed and disseminated and relates to the legal representation of the inmate. Section 951.22(1)(a), F.S.
[9] Sections 951.22(1)(a)-(g), F.S.
[10] This does not include any device which has been approved or issued by the sheriff or officer in charge for investigative or institutional security purposes or for conducting official business.
[11] Sections 951.22(1)(h)-(k), F.S.

Introduction of Contraband at Juvenile Detention Facilities and Juvenile Commitment Programs

Section 985.711, F.S., provides that it is a third degree felony to introduce into or on the grounds of a juvenile detention facility or a juvenile commitment program, any unauthorized food or clothing.[12]

Additionally, it is a second degree felony to introduce into or on the grounds of a juvenile detention facility or juvenile commitment program, any of the following items:

- Any intoxicating beverage or any beverage that causes or may cause an intoxicating effect.
- Any controlled substance as defined in s. 893.02(4), F.S., or any prescription or non-prescription drug that has a hypnotic, stimulating, or depressing effect.
- Any firearm or weapon of any kind or any explosive substance.[13]

Introduction of Contraband at the DCF and the APD Facilities

The DCF and the APD supervise certain criminal defendants who have been found incompetent to proceed or not guilty by reason of insanity.

Section 916.1085, F.S., provides that it is a third degree felony to introduce into or on the grounds of any facility under the supervision or control of the DCF or the APD, any of the following items:

- Any controlled substance as defined in ch. 893, F.S.
- Any firearm or deadly weapon.[14]

Additionally, intoxicating beverages or any item determined by the DCF or the APD to be hazardous to the welfare of clients or the operation of the facility are considered contraband.[15] However, a violation of these items is not a criminal offense.

Florida's Controlled Substance Schedules

Section 893.02(4), F.S., defines controlled substance as any substance named or described in Schedules I-V of s. 893.03, F.S. Section 893.03, F.S., classifies controlled substances into five categories or classifications, known as schedules. The schedules regulate the manufacture, distribution, preparation, and dispensing of substances listed in the schedules. The most important factors in determining which schedule may apply to a substance are the "potential for abuse"[16] of the substance and whether there is a currently accepted medical use for the substance.

[12] Sections 985.711(1)(a)1., F.S.
[13] Section 985.711(1)(a)2.-4., F.S.
[14] Section 916.1085(1)(a), F.S.
[15] Section 916.1085(1)(a), F.S.
[16] Section 893.035(3)(a), F.S., defines "potential for abuse" as a substance that has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of the substance being: used in amounts that create a hazard to the user's health or the safety of the community; diverted from legal channels and distributed through illegal channels; or taken on the user's own initiative rather than on the basis of professional medical advice.

Cannabis

State correctional facilities, county detention facilities, juvenile detention and commitment programs, and facilities operated by the DCF and the APD currently prohibit any controlled substance as defined in ch. 893, F.S., including cannabis.

Section 893.02(3), F.S., defines cannabis as all parts of any plant of the genus *Cannabi*s, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin.

Cannabis is prohibited contraband. However, recent changes made by the Legislature make prosecution of cannabis contraband offenses difficult. In 2014, the Legislature amended s. 893.02(3), F.S., to exclude medical marijuana as defined under s. 381.986, F.S.[17] Similarly, in 2019, the Legislature exempted hemp as defined in s. 581.217, F.S., and industrial hemp as defined in s. 1004.4473, F.S., from the definition of cannabis under s. 893.02(3), F.S.[18]

Medical Marijuana and Hemp

Section 381.986(1)(f), F.S., defines marijuana as all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin, including low-THC cannabis, which are dispensed from a medical marijuana treatment center for medical use by a qualified patient.

Section 581.217(3)(d), F.S., defines hemp as the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof, and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers thereof, whether growing or not, that has a total delta-9-tetrahydrocannobinol concentration that does not exceed 0.3 percent on a dry-weight basis.

Section 1004.4473(1)(c), F.S., defines industrial hemp as all parts and varieties of the *Cannabis sativa* plant, cultivated or possessed by an approved grower under the pilot project, whether growing or not, which contain a tetrahydrocannabinol concentration that does not exceed. 0.3 percent on a dry-weight basis.

Vaping

During the 2019 Legislative Session, CS/SB 7012[19] was adopted, to implement Amendment 9 to the State Constitution, which was approved by the voters of Florida on November 6, 2018, to ban the use of vapor-generating electronic devices, such as electronic cigarettes (e-cigarettes), in enclosed indoor workplaces, as part of the Florida Clean Indoor Air Act. The use of e-cigarettes is commonly referred to as vaping.

[17] Chapter 2014-157, L.O.F.
[18] Chapter 2019-132, L.O.F.
[19] *See* ch. 2019-14, L.O.F. This legislation was approved by the Governor and took effect July 1, 2019.

"Vape" or "vaping" means to inhale or exhale vapor[20] produced by a vapor-generating electronic device or to possess a vapor-generating electronic device while that device is actively employing an electronic, a chemical, or a mechanical means designed to produce vapor or aerosol from a nicotine product or any other substance. The term does not include the mere possession of a vapor-generating electronic device.[21]

A "vapor-generating electronic device" is any product that employs an electronic, a chemical, or a mechanical means capable of producing vapor or aerosol from a nicotine product or any other substance, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of a solution or other substance intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.[22]

Criminal Punishment Code

The Criminal Punishment Code[23] (Code) is Florida's primary sentencing policy. Noncapital felonies sentenced under the Code receive an offense severity level ranking (levels 1-10). Points are assigned and accrue based upon the severity level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the severity level escalates. Points may also be added or multiplied for other factors such as victim injury or the commission of certain offenses like a level 7 or 8 drug trafficking offense. The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.[24] Absent mitigation,[25] the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.[26]

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[20] "Vapor" means aerosolized or vaporized nicotine or other aerosolized or vaporized substance produced by a vapor-generating electronic device or exhaled by the person using such a device. Section 386.202(14), F.S.
[21] Section 386.203(13), F.S.
[22] Section 386.203(15), F.S. Electronic nicotine delivery systems (ENDS) are "noncombustible tobacco products." "These products use an 'e-liquid' that may contain nicotine, as well as varying compositions of flavorings, propylene glycol, vegetable glycerin, and other ingredients. The liquid is heated to create an aerosol that the user inhales." "ENDS may be manufactured to look like conventional cigarettes, cigars, or pipes. Some resemble pens or USB flash drives. Larger devices, such as tank systems or mods, bear little or no resemblance to cigarettes." *Vaporizers, E-Cigarettes, and other Electronic Nicotine Delivery Systems (ENDS)*, U.S. Food and Drug Administration, available at https://www.fda.gov/tobacco-products/products-ingredients-components/vaporizers-e-cigarettes-and-other-electronic-nicotine-delivery-systems-ends (last visited January 15, 2020).
[23] Sections 921.002-921.0027, F.S. *See* chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.
[24] Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.
[25] The court may "mitigate" or "depart downward" from the scored lowest permissible sentence, if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.
[26] If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment. Section 921.0024(2), F.S.

Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S. Currently, a felony of the third degree is ranked as a level 1 offense.[27]

III. Effect of Proposed Changes:

Introduction of Contraband

The bill revises the list items that are contraband on the grounds of state correctional institutions, county detention facilities, juvenile detention facilities, juvenile commitment programs, and facilities operated by the Department of Children and Families (DCF), and the Agency for Persons with Disabilities (APD).

With respect to all facilities, medical marijuana, hemp, and industrial hemp is considered contraband. Moreover, for all facilities, the bill adds vapor-generating electronic devices to the list of contraband items. With respect to facilities operated by APD or DCF, the bill adds cellular telephones and other portable communications devices to the list of contraband items.

The introduction of medical marijuana, hemp, or industrial hemp on the grounds of a state correctional institution, county detention facility, or facility operated by the DCF or the APD is a third degree felony. The introduction of these items on the grounds of a juvenile detention facility or commitment program is a second degree felony.

The intentional and unlawful introduction of a cellular telephone or portable communications device inside the secure perimeter of a DCF or APD facility is a first degree misdemeanor. Finally, it is a first degree misdemeanor to intentionally and unlawfully introduce a vapor-generating electronic device into the secure perimeter of any facility.

Criminal Punishment Code

Additionally, this bill amends the Criminal Punishment Code Offense Severity Ranking Chart by ranking the previously unranked offense of introducing a firearm or deadly weapon, or a controlled substance into a facility operated or controlled by the DCF or the APD, as a level 4 offense. Currently this offense is an unranked third degree felony which means it has the "least severe" level 1 offense ranking for sentencing scores.

This bill is effective October 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[27] Section 921.0023(1), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of the prison bed impact, if any, of legislation, estimates the House companion (HB 745) to this bill, which is substantively similar, will have a "positive insignificant" prison bed impact (an increase of 10 or fewer prison beds).[28]

Similarly, the Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimate for this bill is the same as the House companion bill.[29] The EDR provides the following information relevant to its preliminary estimate:

> Per [Department of Corrections], in FY 18-19, there were 11 new commitments for introducing a controlled substance into a state prison and 132 new commitments for introducing contraband into a county detention facility (type of contraband not defined). There were no commitments for introduction of controlled substances into a DCF or DJJ facility. It is not known how the recent changes to marijuana law impacted contraband offenses prior to this amended language.[30]

[28] The Office of Economic and Demographic Research, Criminal Justice Impact Conference Narrative Analyses of Adopted Impacts, *SB 1286*, (February 10, 2020) available at http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CSSB1286.pdf (last visited February 19, 2020).
[29] The EDR's preliminary estimate is on file with the Senate Committee on Criminal Justice.
[30] *Id.*

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 916.1085, 944.47, 951.22, 985.711, and 921.0022.

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 February 11, 2020:
The committee substitute provides that a person is subject to punishment for certain offenses relating to contraband only if those offences occur in intentional and unlawful manner.

CS by Criminal Justice on January 28, 2020:
The committee substitute changes the language of the statutes so that items are only considered contraband if they are brought into the "secure perimeter" of any facility.

Intoxicating beverages and other items deemed contraband by the DCF and the APD are prohibited in facilities controlled or supervised by those agencies. The committee substitute provides a person who introduces an intoxicating beverage or another item deemed contraband by the DCF or the APD into a facility controlled or supervised by the DCF or the APD commits a first degree misdemeanor.

Additionally, this committee substitute removes the full definition of cannabis and provides the appropriate cross reference to the term. Similarly, the full definition of vapor-generating electronic device is removed, and provides the appropriate cross reference to that term.

B. Amendments:

None.

By the Committees on Judiciary; and Criminal Justice; and
Senator Simmons

590-03526-20 20201286c2

A bill to be entitled

An act relating to contraband in specified facilities; amending s. 916.1085, F.S.; prohibiting the introduction of certain cannabis related substances, cellular telephones and other portable communication devices, and vapor-generating electronic devices inside specified facilities of the Department of Children and Families or of the Agency for Persons with Disabilities; providing criminal penalties; amending s. 944.47; prohibiting the introduction of certain cannabis related substances and vapor-generating electronic devices inside a state correctional institution; providing criminal penalties; amending s. 951.22, F.S.; prohibiting the introduction of certain cannabis related substances and vapor-generating electronic devices inside a county detention facility; providing criminal penalties; amending s. 985.711, F.S.; prohibiting the introduction of certain cannabis related substances, cellular telephones and other portable communication devices, and vapor-generating electronic devices inside specified juvenile detention facilities or commitment programs; providing criminal penalties; amending s. 921.0022, F.S.; ranking the offense of introducing certain contraband into specified facilities of the Department of Children and Families on level 4 of the offense severity ranking chart; providing an effective date.

590-03526-20 20201286c2

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

Section 1. Paragraph (a) of subsection (1) and paragraph (c) of subsection (2) of section 916.1085, Florida Statutes, are amended to read:

916.1085 Introduction or removal of certain articles unlawful; penalty.—

(1)(a) Except as authorized by law or as specifically authorized by the person in charge of a facility, it is unlawful to introduce into or upon the grounds of any facility under the supervision or control of the department or agency, or to take or attempt to take or send therefrom, any of the following articles, which are declared to be contraband for the purposes of this section:

1. Any intoxicating beverage or beverage which causes or may cause an intoxicating effect;

2. Any controlled substance as defined in chapter 893, marijuana as defined in s. 381.986, hemp as defined in s. 581.217, and industrial hemp as defined in s. 1004.4473;

3. Any firearm or deadly weapon; ~~or~~

4. Any cellular telephone or other portable communication device as described in s. 944.47(1)(a)6., intentionally and unlawfully introduced inside the secure perimeter of any facility under the operation and control of the department or agency. As used in this subparagraph, the term "portable communication device" does not include any device that has communication capabilities which has been approved or issued by the person in charge of the facility;

5. Any vapor-generating electronic device as defined in s.

386.203, intentionally and unlawfully introduced inside the secure perimeter of any facility under the operation and control of the department or agency; or

6.~~4.~~ Any other item as determined by the department or the agency, and as designated by rule or by written institutional policies, to be hazardous to the welfare of clients or the operation of the facility.

(2)

(c)1. A person who violates any provision of subparagraph (1)(a)2. or subparagraph (1)(a)3. commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A person who violates any provision of subparagraph (1)(a)1., subparagraph (1)(a)4., subparagraph (1)(a)5., or subparagraph (1)(a)6. commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 2. Paragraph (a) of subsection (1) and paragraph (a) of subsection (2) of section 944.47, Florida Statutes, are amended to read:

944.47 Introduction, removal, or possession of contraband; penalty.—

(1)(a) Except through regular channels as authorized by the officer in charge of the correctional institution, it is unlawful to introduce into or upon the grounds of any state correctional institution, or to take or attempt to take or send or attempt to send therefrom, any of the following articles which are hereby declared to be contraband for the purposes of this section, to wit:

1. Any written or recorded communication or any currency or

coin given or transmitted, or intended to be given or transmitted, to any inmate of any state correctional institution.

2. Any article of food or clothing given or transmitted, or intended to be given or transmitted, to any inmate of any state correctional institution.

3. Any intoxicating beverage or beverage which causes or may cause an intoxicating effect.

4. Any controlled substance as defined in s. 893.02(4), marijuana as defined in s. 381.986, hemp as defined in s. 581.217, industrial hemp as defined in s. 1004.4473, or any prescription or nonprescription drug having a hypnotic, stimulating, or depressing effect.

5. Any firearm or weapon of any kind or any explosive substance.

6. Any cellular telephone or other portable communication device intentionally and unlawfully introduced inside the secure perimeter of any state correctional institution without prior authorization or consent from the officer in charge of such correctional institution. As used in this subparagraph, the term "portable communication device" means any device carried, worn, or stored which is designed or intended to receive or transmit verbal or written messages, access or store data, or connect electronically to the Internet or any other electronic device and which allows communications in any form. Such devices include, but are not limited to, portable two-way pagers, hand-held radios, cellular telephones, Blackberry-type devices, personal digital assistants or PDA's, laptop computers, or any components of these devices which are intended to be used to

assemble such devices. The term also includes any new technology that is developed for similar purposes. Excluded from this definition is any device having communication capabilities which has been approved or issued by the department for investigative or institutional security purposes or for conducting other state business.

7. Any vapor-generating electronic device as defined in s. 386.203, intentionally and unlawfully introduced inside the secure perimeter of any state correctional institution.

(2)(a) A person who violates this section as it pertains to an article of contraband described in subparagraph (1)(a)1., subparagraph (1)(a)2., or subparagraph (1)(a)6. commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A person who violates this section as it pertains to an article of contraband described in subparagraph (1)(a)7. commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Otherwise, a violation of this section is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 3. Subsection (1) and (2) of section 951.22, Florida Statutes, are amended to read:

951.22 County detention facilities; contraband articles.—

(1) It is unlawful, except through regular channels as duly authorized by the sheriff or officer in charge, to introduce into or possess upon the grounds of any county detention facility as defined in s. 951.23 or to give to or receive from any inmate of any such facility wherever said inmate is located at the time or to take or to attempt to take or send therefrom any of the following articles, which are contraband:

(a) Any written or recorded communication. This paragraph does not apply to any document or correspondence exchanged between a lawyer, paralegal, or other legal staff and an inmate at a detention facility if the document or correspondence is otherwise lawfully possessed and disseminated and relates to the legal representation of the inmate.

(b) Any currency or coin.

(c) Any article of food or clothing.

(d) Any tobacco products as defined in s. 210.25(12).

(e) Any cigarette as defined in s. 210.01(1).

(f) Any cigar.

(g) Any intoxicating beverage or beverage that causes or may cause an intoxicating effect.

(h) Any narcotic, hypnotic, or excitative drug or drug of any kind or nature, including nasal inhalators, sleeping pills, barbiturates, marijuana as defined in s. 381.986, hemp as defined in s. 581.217, industrial hemp as defined in s. 1004.4473, and controlled substances as defined in s. 893.02(4).

(i) Any firearm or any instrumentality customarily used or which is intended to be used as a dangerous weapon.

(j) Any instrumentality of any nature which may be or is intended to be used as an aid in effecting or attempting to effect an escape from a county facility.

(k) Any cellular telephone or other portable communication device as described in s. 944.47(1)(a)6., intentionally and unlawfully introduced inside the secure perimeter of any county detention facility. The term does not include any device that has communication capabilities which has been approved or issued by the sheriff or officer in charge for investigative or

institutional security purposes or for conducting other official business.

(1) Any vapor-generating electronic device as defined in s. 386.203, intentionally and unlawfully introduced inside the secure perimeter of any county detention facility.

(2) A person who violates paragraph (1)(a), paragraph (1)(b), paragraph (1)(c), paragraph (1)(d), paragraph (1)(e), paragraph (1)(f), ~~or~~ paragraph (1)(g), or paragraph (1)(l) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A person who violates paragraph (1)(h), paragraph (1)(i), paragraph (1)(j), or paragraph (1)(k) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 4. Paragraph (a) of subsection (1) and subsection (2) of section 985.711, Florida Statutes, are amended to read:

985.711 Introduction, removal, or possession of certain articles unlawful; penalty.—

(1)(a) Except as authorized through program policy or operating procedure or as authorized by the facility superintendent, program director, or manager, a person may not introduce into or upon the grounds of a juvenile detention facility or commitment program, or take or send, or attempt to take or send, from a juvenile detention facility or commitment program, any of the following articles, which are declared to be contraband under this section:

1. Any unauthorized article of food or clothing.

2. Any intoxicating beverage or any beverage that causes or may cause an intoxicating effect.

3. Any controlled substance~~,~~ as defined in s. 893.02(4),

marijuana as defined in s. 381.986, hemp as defined in s. 581.217, and industrial hemp as defined in s. 1004.4473~~; or~~ any prescription or nonprescription drug that has a hypnotic, stimulating, or depressing effect.

4. Any firearm or weapon of any kind or any explosive substance.

5. Any cellular telephone or other portable communication device as described in s. 944.47(1)(a)6., intentionally and unlawfully introduced inside the secure perimeter of any juvenile detention facility or commitment program. As used in this subparagraph, the term "portable communication device" does not include any device that has communication capabilities which has been approved or issued by the facility superintendent, program director, or manager.

6. Any vapor-generating electronic device as defined in s. 386.203, intentionally and unlawfully introduced inside the secure perimeter of any juvenile detention facility or commitment program.

(2)(a) Any person who violates this section as it pertains to an article of contraband described in subparagraph (1)(a)1. commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Any person who violates this section as it pertains to an article of contraband described in subparagraph (1)(a)5. or subparagraph (1)(a)6. commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) In all other cases, a person who violates this section commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 5. Paragraph (d) of subsection (3) of section 921.0022, Florida Statutes, is amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(d) LEVEL 4

Florida Statute	Felony Degree	Description
316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or transaction statements.
499.0051(5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
517.07(1)	3rd	Failure to register securities.
517.12(1)	3rd	Failure of dealer, associated

		person, or issuer of securities to register.
784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
784.075	3rd	Battery on detention or commitment facility staff.
784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
784.081(3)	3rd	Battery on specified official or employee.
784.082(3)	3rd	Battery by detained person on visitor or other detainee.
784.083(3)	3rd	Battery on code inspector.
784.085	3rd	Battery of child by throwing, tossing, projecting, or

		expelling certain fluids or materials.
787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
787.07	3rd	Human smuggling.
790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
790.115(2)(c)	3rd	Possessing firearm on school

		property.
800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
810.06	3rd	Burglary; possession of tools.
810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
812.014(2)(c)3.	3rd	Grand theft, 3rd degree $10,000 or more but less than $20,000.
812.014 (2)(c)4.-10.	3rd	Grand theft, 3rd degree; specified items.
812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property

		stolen $300 or more.
817.505(4)(a)	3rd	Patient brokering.
817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
817.568(2)(a)	3rd	Fraudulent use of personal identification information.
817.625(2)(a)	3rd	Fraudulent use of scanning device, skimming device, or reencoder.
817.625(2)(c)	3rd	Possess, sell, or deliver skimming device.
828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
837.02(1)	3rd	Perjury in official proceedings.
837.021(1)	3rd	Make contradictory statements in official proceedings.

838.022	3rd	Official misconduct.
839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
839.13(2)(c)	3rd	Falsifying records of the Department of Children and Families.
843.021	3rd	Possession of a concealed handcuff key by a person in custody.
843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
874.05(1)(a)	3rd	Encouraging or recruiting

		another to join a criminal gang.
893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)5. drugs).
914.14(2)	3rd	Witnesses accepting bribes.
914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
916.1085(2)(c)1.	3rd	Introduction of specified contraband into certain DCF facilities.
918.12	3rd	Tampering with jurors.
934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
944.47(1)(a)6.	3rd	Introduction of contraband (cellular telephone or other

		portable communication device) into correctional institution.
951.22(1)(h), (j) & (k)	3rd	Intoxicating drug, instrumentality or other device to aid escape, or cellular telephone or other portable communication device introduced into county detention facility.

Section 6. This act shall take effect October 1, 2020.

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 12, 2020

I respectfully request that **Senate Bill 1286**, relating to Contraband in Facilities, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Thank you for your consideration.

Senator David Simmons
Florida Senate, District 9

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/19/2020
Meeting Date

SB 1286
Bill Number (if applicable)

Topic Contraband in Specified Facilities

Amendment Barcode (if applicable)

Name Candice Ericks

Job Title

Address 205 S. Adams St.
Street

Phone 954-648-1204

Tallahassee FL 32301
City *State* *Zip*

Email Candice@ericksconsultants.con

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Seminole County Sheriff

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/19/2020
Meeting Date

1286
Bill Number (if applicable)

Topic Contraband

Amendment Barcode (if applicable)

Name Jodi James

Job Title Legislative Director

Address 1375 Cypress
Street

Phone 321 890 7302

Melbourne FL 32935
City *State* *Zip*

Email Jodi@flCAN.org

Speaking: ☐ For ☒ Against ☒ Information

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

Representing FLORIDA CANNABIS ACTION NETWORK

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 1362
INTRODUCER:	Senator Rodriguez
SUBJECT:	Rental Agreements
DATE:	February 17, 2020
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	**Favorable**
2.	McMillan	McKay	CM	**Favorable**
3.	Stallard	Phelps	RC	**Favorable**

I. Summary:

SB 1362 provides for the protections of the federal Protecting Tenants at Foreclosure Act (PTFA) to take effect as a state law if the federal act is repealed.

Under the PTFA, a person who acquires a foreclosure property ("successor in interest") must give the tenant at least 90 days' notice before evicting him or her. And if the tenant signed a "bona fide" lease before foreclosure, the successor in interest must allow him or her to remain for the term of the lease, even if that exceeds 90 days, unless the successor in interest sells to a person who intends to occupy the property as a primary residence.

Additionally, the bill repeals Florida's current foreclosure-tenant-rights statute, which affords less protection than the federal statute.

II. Present Situation:

Overview

The rights of a tenant to remain in a foreclosed property are provided in both federal and state statutes. The federal statute grants tenants a longer period of protection from eviction and thus preempts the state statute.[1]

Foreclosure

A foreclosure is a civil action in which a mortgagor seeks to have the mortgaged property sold under an order of the court and the proceeds applied in payment of the debt. The primary purpose of the suit is to subject the mortgaged property to the payment of the debt.[2]

[1] *See Mik v. Federal Home Loan Mortg. Corp.*, 743 F.3d 149 (6th Cir. 2014).
[2] *Georgia Cas. Co. v. O'Donnell*, 147 So. 267, 268 (1933).

Federal Law

Under the federal PTFA, a successor in interest to a foreclosure property obtains the property subject to the tenant's rights.[3] Accordingly, the successor in interest must give the tenant at least 90 days' notice before evicting the tenant, regardless of whether the tenant had a lease or when the lease terminates.[4] And if the tenant signed a "bona fide" lease before foreclosure, the successor in interest must allow him or her to remain for the term of the lease, even if that exceeds 90 days, unless the successor in interest sells to a person who intends to occupy the property as a primary residence.[5]

A lease or tenancy is bona fide if:

- The mortgagor or the child, spouse, or parent of the mortgagor under the contract is not the tenant;
- The lease or tenancy was the result of an arms-length transaction; and
- The rent due under the lease is at or near fair-market value or the rent is subsidized under a housing welfare program.[6]

In addition to the generally applicable provisions described above, tenants with Section 8 housing choice voucher assistance enjoy other protections.[7] Particularly, they may retain their Section 8 lease and the successor-in-interest must assume the housing assistance payment contract associated with that lease.[8]

Florida Law

Section 83.561, F.S., is Florida's version of the PTFA. Under s. 83.561, F.S., however, a successor in interest may evict a tenant on 30 days' notice, instead of 90 days'. Moreover, this timeframe is not subject to the terms of a lease under which the tenant inhabits the foreclosed property.

III. Effect of Proposed Changes:

The bill provides that if the federal Protecting Tenants at Foreclosure Act (PTFA) is repealed, a state law providing most of the same rights to tenants in foreclosed properties will take effect.

Under the PTFA, a successor in interest, which will likely be the purchaser of a property at a foreclosure sale, must give a tenant at least 90 days' notice before evicting him or her. And if the tenant signed a "bona fide" lease before foreclosure, the successor in interest must allow him or her to remain for the term of the lease, even if that exceeds 90 days. However, the successor in interest does not have to honor the term of a bona fide lease if the successor in interest sells the property to a person who intends to occupy the property as a primary residence.

[3] Pub. L. 111-22 Sec. 702. This Act was repealed by its sunset provision in 2014, but was reenacted permanently in 2015. *See* Pub. L. 115-174 Sec. 304.
[4] *Id.*
[5] *Id.*
[6] *Id*.
[7] Pub. L. 111-22 Sec. 703.
[8] *Id*.

Additionally, the bill repeals this state's current foreclosure-tenant-rights statute, which affords less protection than the federal statute.

The bill takes effect on July 1, 2020, but the provisions providing for the rights under the PTFA to become state law take effect upon the repeal of the PFTA.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 83.5615 of the Florida Statutes.
This bill repeals section 83.561 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Rodriguez

37-01135B-20 20201362__

A bill to be entitled

An act relating to rental agreements; repealing s. 83.561, F.S., relating to the termination of a rental agreement upon foreclosure; creating s. 83.5615, F.S.; providing a short title; providing for the assumption of interest in certain foreclosures on dwellings or residential real property; providing construction; defining the term "federally-related mortgage loan"; requiring the director of the Division of Consumer Services of the Department of Agriculture and Consumer Services to notify the Division of Law Revision of the repeal of the Protecting Tenants at Foreclosure Act of 2009 within a specified timeframe; providing effective dates, including a contingent effective date.

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

Section 1. Section 83.561, Florida Statutes, is repealed.

Section 2. Effective upon the repeal of the federal Protecting Tenants at Foreclosure Act, Pub. L. No. 111-22, section 83.5615, Florida Statutes, is created to read:

83.5615 Protecting Tenants at Foreclosure Act.—

(1) This section may be cited as the "Protecting Tenants at Foreclosure Act."

(2) In the case of any foreclosure on a federally-related mortgage loan or on any dwelling or residential real property after the effective date of this section, any immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to:

37-01135B-20 20201362__

(a) The successor in interest providing a notice to vacate to any bona fide tenant at least 90 days before the effective date of the notice; and

(b) The rights of any bona fide tenant:

1. Under any bona fide lease entered into before the notice of foreclosure to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence, subject to the tenant receiving the 90-day notice under paragraph (a); or

2. Without a lease or with a lease terminable at will, subject to the tenant receiving the 90-day notice under paragraph (a).

This subsection does not affect the requirements for termination of any federal- or state-subsidized tenancy or of any state or local law that provides more time or other additional protections for tenants.

(3) For the purposes of this section:

(a) A lease or tenancy shall be considered bona fide only if:

1. The mortgagor or the child, spouse, or parent of the mortgagor under the contract is not the tenant;

2. The lease or tenancy was the result of an arms-length transaction; and

3. The lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized due to a federal,

state, or local subsidy.

(b) The term "federally-related mortgage loan" has the same meaning as in 12 U.S.C. s. 2602.

(c) The date of a notice of foreclosure shall be deemed to be the date on which complete title to a property is transferred to a successor entity or person as a result of an order of a court or pursuant to provisions in a mortgage, deed of trust, or security deed.

Section 3. If the Protecting Tenants at Foreclosure Act of 2009, Pub. L. No. 111-22, is repealed, the director of the Division of Consumer Services of the Department of Agriculture and Consumer Services shall notify the Division of Law Revision within 10 days after the repeal.

Section 4. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2020.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Judiciary, *Vice Chair*
Appropriations Subcommittee on Agriculture, Environment, and General Government
Ethics and Elections
Rules

SENATOR JOSE JAVIER RODRIGUEZ
37th District

February 14th, 2020

Chair Benacquisto
Committee on Rules
404 S. Monroe Street
Tallahassee, FL 32399-1100
Sent via email to benacquisto.lizbeth@flsenate.gov

Chair Benacquisto,

I respectfully request that you place SB 1362: Rental Agreements on the agenda of the Committee on Rules at your earliest convenience.

Should you have any questions or concerns, please feel free to contact me or my office. Thank you in advance for your consideration.

Thank you,

Senator José Javier Rodríguez
District 37

CC:
John B. Phelps, Staff Director
Cynthia Futch, Administrative Assistant
Joshua Goergen, Legislative Assistant
Timothy Morris, Legislative Assistant

REPLY TO:
- 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 854-0365
- 220 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5037

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

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-19-2020
Meeting Date

1362
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

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

Representing Real Property Section - Fla. Bar

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/19/2020 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 1362

Meeting Date *Bill Number (if applicable)*

Topic Rental Agreements *Amendment Barcode (if applicable)*

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

Representing New Florida Majority & Organize Florida

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 1564
INTRODUCER:	Judiciary Committee; Banking and Insurance Committee; and Senator Stargel
SUBJECT:	Genetic Information for Insurance Purposes
DATE:	February 17, 2020 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Knudson	BI	**Fav/CS**
2.	Elsesser	Cibula	JU	**Fav/CS**
3.	Knudson	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1564 provides that a life insurer or long-term care insurer may not cancel, limit, or deny insurance coverage or establish different insurance rates based on the "genetic information" of applicants. This same prohibition applies to health insurers under current law.

The bill expressly provides that a statute regulating the use of genetic information for insurance purposes does not prevent life insurers from accessing an applicant's medical record as part of an application exam and does not prevent life insurers from considering medical diagnoses included in the medical record.

The bill has an effective date of July 1, 2020.

II. Present Situation:

Use of Genetic Information for Insurance Purposes – Florida Requirements

Insurance policies for life, disability income, and long-term care[1] are exempt from s. 627.4301, F.S., which provides standards for the use of genetic information by health insurers. Health

[1] Section 627.4301(2)(c), F.S. Other types of insurance that are wholly exempt from the statute are accident-only policies, hospital indemnity or fixed indemnity policies, dental policies, and vision policies.

insurers[2] may not, in the absence of a diagnosis of a condition related to genetic information, use such information to cancel, limit, or deny coverage, or establish differentials in premium rates. Health insurers are also prohibited from requiring or soliciting genetic information, using genetic test results, or considering a person's decisions or actions relating to genetic testing in any manner for any insurance purpose.

Section 627.4031, F.S., defines "genetic information" to mean information derived from genetic testing to determine the presence or absence of variations or mutations, including carrier status, in an individual's genetic material or genes that are:

- Scientifically or medically believed to cause a disease disorder, or syndrome, or are associated with a statistically increased risk of developing a disease; or
- Associated with a statistically increased risk of developing a disease, disorder, or syndrome, which is producing or showing no symptoms at the time of testing.

Genetic testing, for purposes of s. 627.4031, F.S., does not include routine physical examinations or chemical, blood, or urine analysis, unless specifically conducted to obtain genetic information, or questions regarding family history.

Prohibition of Unfair Discrimination Between Individuals

Insurance policy forms for insurance sold in Florida must be filed and approved by the Office of Insurance Regulation (OIR).[3] The Unfair Insurance Trade Practices Act prohibits "knowingly making or permitting unfair discrimination between individuals of the same actuarially supportable class and expectation of life, in the rates charged for a life insurance or annuity contract, in the dividends or other benefits payable thereon, or in any other term or condition of such contract."[4] Similarly, the act prohibits knowingly making or permitting unfair discrimination between individuals of the same actuarially supportable class, as determined at the time of initial issuance of the coverage, and essentially the same hazard, in the amount of premium, policy fees, or rates charged for a policy or contract of disability insurance, in benefits payable, in the terms or conditions of the contract, or in any other manner.[5] Genetic information used in the underwriting and pricing of life insurance, long-term care insurance, and disability income insurance must meet these requirements.

Genetic Testing – Informed Consent and Privacy Requirements

Section 760.40, F.S., provides that the results of DNA analysis are the exclusive property of the person tested. Accordingly, DNA analysis may be performed only with the informed consent of the person to be tested. The results of DNA analysis, whether held by a public or private entity, are confidential, and may not be disclosed without the consent of the person tested. DNA analysis held by a public entity must be held confidential and exempt from public disclosure.

[2] Section 627.4301(1)(b), F.S., defines health insurer to mean, "an authorized insurer offering health insurance as defined in s. 624.603, F.S., a self-insured plan as defined in s. 624.031, F.S., a multiple-employer welfare arrangement as defined in s. 624.437, F.S., a prepaid limited health service organization as defined in s. 636.003, F.S., a health maintenance organization as defined in s. 641.19, F.S., a prepaid health clinic as defined in s. 641.402, F.S., a fraternal benefit society as defined in s. 632.601, F.S., or any health care arrangement whereby risk is assumed."
[3] Section 624.410, F.S.
[4] Section 626.9541(1)(g)1., F.S.
[5] Section 626.9541(1)(g)2., F.S.

Violation of these requirements is a first degree misdemeanor punishable by up to 1 year imprisonment and a fine of up to $1,000. DNA analysis, for purposes of the statute, is the medical and biological examination and analysis of a person to identify the presence and composition of genes in that person's body, and includes DNA typing and genetic testing.

The law also requires any person who performs DNA analysis or receives records, results, or findings of DNA analysis to provide the person tested with notice that the analysis was performed or the information was received. The notice must state that, upon the request of the person tested, the information will be made available to his or her physician. Further, the notice must state whether the information was used in any decision to grant or deny any insurance, employment, mortgage, loan, credit, or educational opportunity. If such information was used in a denial of the foregoing, the analysis must be repeated to verify the accuracy of the first analysis, and if the first analysis is found to be inaccurate, the denial must be reviewed.

Federal Laws on the Use of Genetic Information for Insurance Purposes

Federal law generally prohibits health insurers from soliciting genetic information and using such information for underwriting purposes. Federal law does not apply these prohibitions to life insurance, disability insurance, or long-term care insurance.

Genetic Information Nondiscrimination Act of 2008

The Genetic Information Nondiscrimination Act of 2008 (GINA) amended a number of existing federal laws to prohibit health insurers from using genetic information for underwriting purposes.[6] The act does not apply to life insurance, long-term care insurance, or disability insurance.

Title I of GINA provides protections against discrimination by health insurers on the basis of genetic information.[7] GINA prohibits health insurers and health plan administrators from using genetic information to make rating or coverage decisions.[8] These decisions include eligibility for coverage and setting premium or contribution amounts.
GINA generally prohibits health insurers and health plan administrators from requesting or requiring genetic information of an individual or the individual's family members,[9] nor may such information be requested, required or purchased for underwriting purposes.[10] Underwriting purposes include rules for eligibility, determining coverage or benefits, cost-sharing mechanisms, calculating premiums or contribution amounts, rebates, payments in kind, pre-existing condition exclusions, and other activities related to the creation, renewal, or replacement of health insurance or health benefits. Underwriting purposes does not include determining medical appropriateness where an individual seeks a health benefit under a plan, coverage, or

[6] Pub. Law No. 110-233, s. 122 Stat. 881-921 (2008), https://www.gpo.gov/fdsys/pkg/PLAW-110publ233/pdf/PLAW-110publ233.pdf (last accessed January 24, 2020).
[7] 110th Congress, *Summary: H.R.493 Public Law* (May 21, 2008) (last accessed January 24, 2020).
[8] *See* 29 USC 1182; 42 USC 300gg-1; and 42 USC 300gg-53.
[9] Department of Health and Human Services, *"GINA" The Genetic Information Nondiscrimination Act of 2008: Information for Researchers and Health Care Professionals*, (April 6, 2009).
https://www.genome.gov/Pages/PolicyEthics/GeneticDiscrimination/GINAInfoDoc.pdf (last accessed January 27, 2020).
[10] *See* 29 USC 1182(d); 42 USC 300gg-4(d); and 42 USC 300gg-53(e).

policy.[11] Genetic information may be used by an insurer to make a determination regarding the payment of benefits, for example, as the basis of a diagnosis that then would lead to benefits being provided under the insurance policy.

The protections in GINA apply to the individual and group health markets, including employer sponsored plans under the Employee Retirement Income Security Act of 1974 (ERISA).[12] GINA generally expanded many of the genetic information protections in the Health Insurance Portability and Accountability Act of 1996[13] (HIPAA) and applied them to the individual, group and Medicare supplemental marketplaces.[14] The protections enacted in GINA do not apply to Medicare or Medicaid because both programs bar the use of genetic information as a condition of eligibility.[15] GINA also prohibits employment discrimination on the basis of genetic information.[16]

States may provide stronger protections than GINA, which provides a baseline level of protection against prohibited discrimination on the basis of genetic information.

Health Insurance Portability and Accountability Act of 1996

HIPAA establishes national standards to ensure the privacy and nondisclosure of personal health information. The rule applies to "covered entities" which means a health plan, health care clearinghouse, other health care providers, and their business associates.[17] HIPAA provides standards for the use and disclosure of protected health information and generally prohibits covered entities and their business associates from disclosing protected health information, except as otherwise permitted or required.[18] Covered entities generally may not sell protected health information.[19] HIPPA, as modified by GINA, also prohibits health plans from using or disclosing protected health information that is genetic information for underwriting purposes.[20]

Patient Protection and Affordable Care Act of 2010

The Patient Protection and Affordable Care Act of 2010 (ACA) requires all individual and group health plans to enroll applicants regardless of their health status, age, gender, or other factors that might predict the use of health services.[21] These guaranteed issue and guaranteed renewability requirements apply to genetic testing.

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[11] *See* 45 CFR 164.502(a)(5)(i)(4)(B).
[12] Perry W. Payne, Jr. et al, *Health Insurance and the Genetic Information Nondiscrimination Act of 2008: Implications for Public Health Policy and Practice*, Public Health Rep., Vol. 124 (March-April 2009), 328, 331.
[13] Codified 42 USC 300gg, 29 USC 1181 et seq., and 42 USC 1320d et seq.
[14] *See* Payne fn. 12 at pg. 329.
[15] *See id*.
[16] *See* 29 CFR 1635(a), which prohibits the use of genetic information in employment decision making; restricts employers and other entities from requesting, requiring, or purchasing genetic information; requires that genetic information be maintained as a confidential medical record, and places strict limits on disclosure of genetic information; and provides remedies for individuals whose genetic information is acquired, used, or disclosed in violation of GINA.
[17] See 45 CFR 160.103.
[18] See 45 CFR 164.502(a).
[19] See 45 CFR 164.502(a)(5)(ii)(A).
[20] See 45 CFR 164.502(a)(5)(i).
[21] See 42 USC 300gg-1 and 42 USC 300gg-2.

Use of Genetic Information for Insurance Purposes – Requirements in Other States and Canada

Federal law under GINA applies to all states and provides a baseline level of protection that states may exceed. The NIH has identified 106 state statutes addressing health insurance nondiscrimination across 48 states and the District of Columbia.[22] Fewer states address genetic testing regarding other lines of insurance such as life insurance, disability insurance, and long-term care insurance.[23]

Examples of such statutes include Oregon, which requires informed consent to conduct testing, prohibits the use of genetic information for underwriting or ratemaking for any policy for hospital and medical expense, and prohibits using the genetic information of a blood relative for underwriting purposes regarding any insurance policy.[24] Informed consent when an insurer requests genetic testing for life or disability insurance is required in California, New Jersey, and New York.[25] Massachusetts prohibits unfair discrimination based on genetic information or a genetic test and prohibits requiring an applicant or existing policyholder to undergo genetic testing.[26] Arizona prohibits the use of genetic information for underwriting or rating disability insurance in the absence of a diagnosis, and life and disability insurance policies may not use genetic information for underwriting or ratemaking unless supported by the applicant's medical condition, medical history, and either claims experience or actuarial projections.[27]

Canadian Genetic Non-Discrimination Act

In 2017, the Canadian Parliament passed a Genetic Non-Discrimination Act[28] (Canadian Act). The Canadian Act prohibits requiring an individual to undergo a genetic test, or disclose the results of a genetic test, as a condition of providing goods or services to that individual, entering into or continuing a contract or agreement with that individual, or offering or continuing specific terms or conditions in a contract or agreement with that individual. Thus, an insurer could not require an applicant provide genetic testing results. The Canadian Act also requires an individual's written consent prior to using or disclosing the results of a genetic test. The Canadian Act exempts physicians and other health care practitioners in respect to an individual to whom they are providing health services and persons conducting medical, pharmaceutical, or scientific research in respect of an individual who is a participant in the research. Violations of the act are punishable under the criminal law. The Canadian Act is currently being challenged before the Supreme Court of Canada.[29]

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[22] National Institutes of Health, *Genome Statute and Legislation Database Search*. https://www.genome.gov/policyethics/legdatabase/pubsearch.cfm (database search for "state statute," "health insurance nondiscrimination" performed by Committee on Banking and Insurance professional staff on January 24, 2020).
[23] *See id*. (database search for "state statute," "other lines of insurance nondiscrimination" performed by Committee on Banking and Insurance professional staff on January 24, 2020).
[24] Section 746.135, O.R.S.
[25] *See* Cal. Ins. Code s. 10146 et seq.; s. 17B:30-12, N.J.S.; and ISC s. 2615, N.Y.C.L.
[26] Chapter 175 sections 108I and 120E, M.G.L.
[27] Section 20-448, A.R.S.
[28] Statutes of Canada 2017, c. 3. https://laws-lois.justice.gc.ca/eng/acts/G-2.5/page-1.html#h-1 (last accessed January 27, 2020).
[29] *Canadian Coalition for Genetic Fairness v. Attorney General of Quebec, et. al*, Docket No. 38478 https://www.scc-csc.ca/case-dossier/info/sum-som-eng.aspx?cas=38478 (last accessed January 27, 2020); Leslie MacKinnon, *Genetic Non-Discrimination Bill Passed by Parliament, But Challenged by Government at Top Court*, iPolitics, (Oct 10, 2019)

Genetic Testing

Genetic testing includes a number of medical tests that identify and examine chromosomes, genes, or proteins for the purpose of obtaining genetic information.[30] Genetic testing is often used for medical or genealogical purposes.

Medical Genetic Testing

Genetic testing can be done to diagnose a genetic disorder, to predict the possibility of future illness, and predict a patient's response to therapy.[31] More than 2,000 genetic tests are currently available and more tests are constantly being developed.[32] The National Institutes of Health[33] (NIH) have identified the following available types of medical genetic testing:[34]

- *Diagnostic testing* identifies or rules out a specific genetic or chromosomal condition, and is often used to confirm a diagnosis when a particular condition is suspected based on the individual's symptoms. For example, a person experiencing abnormal muscle weakness may undergo diagnostic testing that screens for various muscular dystrophies.
- *Predictive and pre-symptomatic testing* is used to detect gene mutations associated with disorders that appear after birth, often later in life. This testing is often used by people who are asymptomatic, but have a family member with a genetic disorder. Predictive testing can identify mutations that will result in a genetic disorder, or that increase a person's risk of developing disorders with a genetic basis, such as cancer.
- *Carrier testing* identifies people who carry one copy of a gene mutation that, when present in two copies, causes a genetic disorder. This test is often used by parents to determine their risk of having a child with a genetic disorder.
- *Preimplantation testing* is used to detect genetic changes in embryos developed by assisted reproductive techniques such as in-vitro fertilization. Small numbers of cells are taken from the embryos and tested for genetic changes prior to implantation of a fertilized egg.
- *Prenatal testing* detects changes in a baby's genes or chromosomes before birth. Such testing is often offered if there is an increased risk the baby will have a genetic or chromosomal disorder.
- *Newborn screening* is performed shortly after birth to identify genetic disorders that can be treated early in life. Florida screens for 31 disorders recommended by the United States Department of Health and Human Services Recommended Uniform Screening Panel and 22 secondary disorders, unless a parent objects in writing.[35]

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https://ipolitics.ca/2019/10/10/genetic-non-discrimination-bill-passed-by-parliament-but-challenged-by-government-at-top-court/

[30] National Institutes of Health, *Genetic Testing*, pg. 3 (January 30, 2018). Available for download at https://ghr.nlm.nih.gov/primer/testing/uses (last accessed January 27, 2020).

[31] Francis S. Collins, *A Brief Primer on Genetic Testing* (January 24, 2003). https://www.genome.gov/10506784/a-brief-primer-on-genetic-testing/ (last accessed January 24, 2020).

[32] *See* Ohio State University Wexner Medical Center, *Facts About Testing*. https://wexnermedical.osu.edu/genetics/facts-about-testing (last accessed January 24, 2020).

[33] The National Institutes of Health is the medical research agency of the United States federal government. The NIH is part of the United States Department of Health and Human Services. The NIH is made of 27 different Institutes and Centers, each having a specific research agenda.

[34] *See* National Institutes of Health, fn. 30, at pgs. 5-6.

[35] Florida Department of Health, *Newborn Screening*. http://www.floridahealth.gov/programs-and-services/childrens-health/newborn-screening/index.html (last accessed January 24, 2020).

Genetic testing is often used for research purposes. For example, genetic testing may be used to discover genes or increase understanding of genes that are newly discovered or not well understood.[36] Testing results as part of a research study are usually not available to patients or health care providers.[37]

The Human Genome Project, which in April 2003, successfully sequenced and mapped all of the genes of humans, and a variety of other genetic testing, has led to multiple medical advances. For example, genetic testing identified that the reason the drug Plavix, which is commonly used to prevent blood clots in patients at risk for heart attacks and strokes, does not work for approximately 30 percent of the United States population because variations in the CYP2C19 gene account for the lack of a response.[38] Thus, genetic testing can identify persons for whom the drug will not be effective.

The American Medical Association supports broad protections against genetic discrimination because it believes genetic testing and genetic information is essential to advancements in medical knowledge and care.[39] Accordingly, the organization supports comprehensive federal protection against genetic discrimination because "patients remain at-risk of discrimination in a broad array of areas such as life, long-term care, and disability insurance as well as housing, education, public accommodations, mortgage lending, and elections."

Methods of genetic testing used for medical purposes include:

- Molecular genetic tests (Gene tests) that study single genes or short lengths of DNA to identify variations or mutations that lead to a genetic disorder.
- Chromosomal genetic tests that analyze whole chromosomes or long lengths of DNA to see if there are large genetic changes, such as an extra copy of a chromosome, that cause a genetic condition.
- Biochemical genetic tests that study the amount or activity level of proteins; abnormalities in either can indicate changes to the DNA that result in a genetic disorder.

Genetic Ancestry Testing

Genetic ancestry testing, also called genetic genealogy, is used to identify relationships between families and identify patterns of genetic variation that are often shared among people of particular backgrounds.[40] According to the NIH, genetic ancestry testing results may differ between providers because they compare genetic information to different databases. The tests can yield unexpected results because human populations migrate and mix with other nearby groups. Scientists can use large numbers of genetic ancestry test results to explore the history of populations. Three common types of genetic ancestry testing include:[41]

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[36] *See* Ohio State University Wexner Medical Center, fn. 32.
[37] *See* National Institutes of Health, fn. 30, at pg. 24.
[38] Francis S. Collins, Perspectives on the Human Genome Project, pg. 50 (June 7, 2010). https://www.genome.gov/Pages/Newsroom/Webcasts/2010ScienceReportersWorkshop/Collins_NHGRIsciencewriters060710.pdf (last accessed January 27, 2020).
[39] American Medical Association, *Genetic Discrimination – Appendix II. AMA Legislative Principles on Genetic Discrimination and Surreptitious Testing*, (March 2013) https://www.ama-assn.org/sites/default/files/media-browser/public/genetic-discrimination-policy-paper.pdf (last accessed January 24, 2020).
[40] *See* National Institutes of Health, fn. 30, at pg. 25.
[41] *See* National Institutes of Health, fn. 30, at pg. 26.

- Single nucleotide polymorphism testing to evaluate large numbers of variations across a person's entire genome. The results are compared with those of others who have taken the tests to provide an estimate of a person's ethnic background.
- Mitochondrial DNA testing to identify genetic variations in mitochondrial DNA, which provides information about the direct female ancestral lines.
- Y chromosome testing, performed exclusively on males, often used to investigate whether two families with the same surname are related.

Direct to Consumer Genetic Testing

Traditionally, genetic testing was available only through health care providers.[42] Direct-to-consumer genetic testing provides access to genetic testing outside the health care context. Generally, the consumer purchases a genetic testing kit from a vendor that mails the kit to the consumer. The consumer collects a DNA sample and mails it back to the vendor. The vendor uses a laboratory to conduct the test. The consumer is then notified of the test results.

Direct-to-consumer genetic testing has primarily been used for genealogical purposes, but increasing numbers of products now provide medical information. For example, the vendor 23andME offers, with FDA approval, genetic testing that examines the consumer's risks for certain diseases including Parkinson's disease, celiac disease, and late-onset Alzheimer's disease.[43]

Direct to consumer genetic testing is increasing in popularity, with one company reporting having sold approximately 1.5 million genetic testing kits from November 24, 2017, through November 27, 2017.[44] The increased proliferation of such testing is accompanied by increased concerns about the privacy of such information. The privacy protections of HIPAA usually do not apply to direct-to-consumer genetic testing because the vendors selling such tests are often not "covered entities" and thus not subject to HIPAA. The Federal Trade Commission has recently warned consumers to consider the privacy implications of genetic testing kits.[45]

Direct-to-consumer genetic testing is being used by law enforcement agencies to identify suspects in crimes.[46] To do so, law enforcement agencies test crime scene DNA samples for DNA markers that in many cases are shared with blood relatives. The DNA markers can then be uploaded to a free online database, GEDmatch, which is used by the public to search for relatives. The DNA database identifies relatives that match the DNA markers, information which can then be used to focus on an individual suspect.

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[42] *See* National Institutes of Health, fn. 30, at pg. 11.
[43] 23andMe, *Find Out What Your DNA Says About Your Health, Traits and Ancestry* https://www.23andme.com/dna-health-ancestry/ (last accessed January 24, 2020).
[44] Megan Molteni, *Ancestry's Genetic Testing Kits Are Heading For Your Stocking This Year*, Wired, (December 1, 2017) https://www.wired.com/story/ancestrys-genetic-testing-kits-are-heading-for-your-stocking-this-year/ (last accessed January 24, 2020).
[45] Federal Trade Commission, *DNA Test Kits: Consider the Privacy Implications*, (December 12, 2017). https://www.consumer.ftc.gov/blog/2017/12/dna-test-kits-consider-privacy-implications (last accessed January 24, 2020).
[46] Jocelyn Kaiser, *We Will Find You: DNA Search Used to Nab Golden State Killer Can Home In On About 60% of White Americans*, Science (October 11, 2018) https://www.sciencemag.org/news/2018/10/we-will-find-you-dna-search-used-nab-golden-state-killer-can-home-about-60-white (last accessed January 27, 2020).

Concerns Over Direct-to-Consumer Genetic Testing Privacy and Fraud

The use of genetic information to identify other family members has public policy implications that are not limited to criminal law. A 2018 study estimated that a genetic database would need to cover only 2 percent of the target population to provide a third-cousin match to nearly any person.[47] The authors of the study noted that genetic information and the use of genetic databases that are publicly available could be used for harmful purposes, such as re-identifying research subjects from their genetic data.

Chief Financial Officer Jimmy Patronis issued a consumer alert on August 15, 2019, warning Floridians of genetic testing scams that purport to offer free genetic testing to Medicare beneficiaries, but are actually attempts to obtain personal information for identity theft or Medicare information for fraudulent billing purposes.[48] The consumer alert noted that the Better Business Bureau had started receiving reports of the genetic testing scams, which occurred through telemarketing calls, booths at public events, health fairs, and door-to-door visits.[49]

A Department of Defense memorandum issued December 20, 2019, advised military personnel to refrain from the purchase or use of direct-to-consumer genetic testing. The department noted that direct-to-consumer genetic tests "are largely unregulated and could expose personal and genetic information, and potentially create unintended security consequences and increased risk to the joint force and mission."[50] The memorandum stated that many direct-to-consumer genetic tests that provide health information vary in their validity and are not reviewed by the Food and Drug Administration, and thus are not independently reviewed to verify the claims of the seller.[51] The memorandum also noted that "there is increased concern in the scientific community that outside parties are exploiting the use of genetic data for questionable purposes, including mass surveillance and the ability to track individuals without their authorization or awareness."[52]

Life Insurance, Disability Insurance, and Long-Term Care Insurance

Forms of Life Insurance

Life insurance is the insurance of human lives.[53] Life insurance can be purchased in the following forms:[54]

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[47] Yaniv Erlich et al., *Identify Inference of Genomic Data Using Long-Range Familial Searches*, Science Vol. 362, Issues 6415, Pgs. 690-694 (November 9, 2018) https://science.sciencemag.org/content/362/6415/690/tab-pdf (last accessed January 27, 2020).
[48] Florida Department of Financial Services, *Consumer Alert CFO Jimmy Patronis: Beware of Door to Door Genetic Testing Scams Targeting Seniors*, (August 15, 2019) https://www.myfloridacfo.com/sitePages/newsroom/pressRelease.aspx?ID=5357 (last accessed January 27, 2020).
[49] Better Business Bureau, *BBB Warning: Beware of Genetic Testing Scam Hitting Florida*, (August 2, 2019). https://www.bbb.org/article/news-releases/20457-bbb-warning-beware-of-genetic-testing-scam-hitting-florida (last accessed January 27, 2020).
[50] Department of Defense, *Memorandum on Direct-to-Consumer Genetic Testing Advisory for Military Members*, (Dec 20, 2019) https://www.scribd.com/document/440727436/DOD-memo-on-DNA-testing#download&from_embed (last accessed January 27, 2019).
[51] *See id*.
[52] *See id*.
[53] Section 624.602, F.S.
[54] National Association of Insurance Commissioners, *Life Insurance – Considerations for All Life Situations*, http://www.insureuonline.org/insureu_type_life.htm (last accessed January 24, 2020).

- Term life insurance provides coverage for a set term of years and pays a death benefit if the insured dies during the term.[55]
- Permanent life insurance remains in place if the insured pays premiums, and the coverage pays a death benefit. Such policies have an actual cash value component that increases over time and from which the policy owner may borrow. There are four types of permanent life insurance:
  - Whole life insurance offers a fixed premium, guaranteed annual cash value growth and a guaranteed death benefit. It does not provide investment flexibility and the policy coverage, once established, may not be changed.
  - Universal life insurance allows the policyholder to determine the amount and timing of premium payments within certain limits. The coverage level may be adjusted. It guarantees certain levels of annual cash value growth but not investment flexibility.
  - Variable life insurance allows allocation of investment funds, but does not guarantee minimum cash value because of fluctuations in the value of investments.
  - Variable universal life insurance combines variable and universal life insurance.[56]

Life Insurance Underwriting and Risk Classification

Life insurance underwriters seek to identify and classify the risk represented by a proposed insured and then classify those risks into pools of similar mortality or morbidity risk.[57] Mortality risk the risk of death whereas morbidity risk is the risk of being unhealthy or having a disease. Insureds within the same risk classification pay the same premiums, which must be adequate to ensure solvency, pay claims, and provide the insurer (with investment income) a reasonable rate of return. Accurate risk assessment is important in life insurance because misclassification of risk results in severe consequences because the life insurance contract is often in place for long periods of time, as in the case of long-term and whole life policies.[58]

A 2019 paper in the Journal of Insurance Regulation of the National Association of Insurance Commissioners noted that more than 5,000 genes have been identified as relating to a particular disease, many of which have predictive value in estimating the probability in developing a genetic disease that has consequences for mortality.[59] Examples of genetic tests with informational value for life insurance underwriting include:

- Breast cancer – BRCA1 or BRCA 2;
- Hypertrophic cardiomyopathy;
- Dilated cardiomyopathy;
- Arrhythmogenic right ventricular cardiomyopathy;
- Long QT syndrome;
- Brugada syndrome;
- Huntington's disease;

[55] National Association of Insurance Commissioners, *Life Insurance FAQs*, http://www.insureuonline.org/consumer_life_faqs.htm (last accessed January 24, 2020).
[56] *See* "What are the different types of permanent life insurance policies?" *available at* https://www.iii.org/article/what-are-different-types-permanent-life-insurance-policies (last accessed March 26, 2019).
[57] American Council of Life Insurers, *Life Insurer Issues*. (On file with the Senate Committee on Banking and Insurance).
[58] Patricia Born, *Genetic Testing in Underwriting: Implications for Life Insurance Markets, Journal of Insurance Regulation* Vol. 38, No. 5 (2019), https://www.naic.org/prod_serv/JIR-ZA-38-05-EL.pdf (last accessed January 27, 2020).
[59] *See* Born fn. 58 at pg. 5.

- Polycystic kidney disease;
- Myotonic muscular dystrophy – DM1 or DM2;
- Alzheimer's disease early onset, autosomal dominance;
- Hereditary nonpolyposis colorectal cancer;
- Marfan Syndrome; and
- Catecholaminergic polymorphic ventricular tachycardia.

When a policyholder has access to information about their mortality risk which the life insurer lacks, two problems arise for the life insurer. The first problem is that the policy may be underpriced, which can result in inadequate premium dollars to pay death benefits.[60] The second problem is that consumers with knowledge of their increased mortality risk will be more likely to keep their policy in-force, which also has an impact on proper pricing of life insurance as premiums are calculated using assumptions that a certain percentage of policyholders will allow the insurance contract to lapse.[61]

The American Council of Life Insurers has expressed concerns that the proliferation of genetic testing could increase adverse selection and impact the availability and affordability of products over time.[62] Studies addressing whether genetic testing leads to adverse selection have reached varying conclusions. Studies of women tested for the BRCA1 gene mutation (linked to breast cancer risk)[63] and adults tested for Alzheimer's risk[64] found little evidence of adverse selection in the life insurance market. However, the study regarding Alzheimer's risk found evidence of adverse selection for long-term care insurance, as 17 percent of those who tested positive subsequently changed their LTC policy in the year after testing positive of Alzheimer's risk, in comparison with 2 percent of those who tested negative and 4 percent of those who did not receive test results.[65]

Annuities

Life insurance also encompasses annuities and disability policies.[66] An annuity is a contract between a customer and an insurer wherein the customer makes a lump-sum payment or a series of payments to an insurer that in return agrees to make periodic payments to the annuitant at a future date, either for the annuitant's life or a specified period. Disability insurance pays a weekly or monthly income for a set period if the insured becomes disabled and cannot continue working or obtain work.

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[60] *See* Born fn. 58 at pg. 10.
[61] *See id*.
[62] Gina Kolata, *New Gene Tests Pose a Threat to Insurers*, New York Times (May 12, 2017), https://www.nytimes.com/2017/05/12/health/new-gene-tests-pose-a-threat-to-insurers.html (last accessed January 24, 2020).
[63] Cathleen D. Zick, et. al., *Genetic Testing, Adverse Selection, and the Demand for Life Insurance*, pgs. 29-39 American Journal of Medical Genetics (July 2000) (Abstract provided by NIH at https://www.ncbi.nlm.nih.gov/pubmed/10861679 (last accessed January 24, 2020)).
[64] Cathleen D. Zick, *Genetic Testing For Alzheimer's Disease And Its Impact on Insurance Purchasing Behavior*, pgs. 483-490, Health Affairs vol. 23, no. 2 (March/April 2005), https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.24.2.483 (last accessed January 24, 2020).
[65] *See* Zick fn. 64 at pgs. 487-488.
[66] Section 624.602, F.S.

Disability Insurance

Disability insurance compensates the insured for a portion of income lost because of a disabling injury or illness.[67] There are two types of disability insurance: short-term and long-term. A short-term policy typically replaces a portion of lost income from 3 to 6 months following the disability. Long-term policies generally begin 6 months after the disability and can last a set number of years or until retirement age. Disability insurance is sometimes offered by life insurers.

Long-Term Care Insurance

Long-term care (LTC) insurance covers the costs of nursing homes, assisted living, home health care, and other long-term care services. A long-term care insurance policy provides coverage for medically necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, rehabilitative, maintenance or personal care services provided in a setting other than an acute care unit of a hospital.[68] Long-term care insurance usually pays fixed-dollar amounts or the actual costs of care, often subject to a maximum daily benefit amount.[69]
The LTC insurance market provides an example of the negative effects of insurers not accurately projecting their underwriting risk. LTC insurers made incorrect assumptions when selling the coverage, particularly in the 1980s and 1990s.[70] The LTC insurers overestimated the number of people that would cancel their coverage or allow it to lapse, underestimated the life span of insureds and the time span of the treatment they would receive, and overestimated earnings on LTC premiums which were negatively affected by dropping interest rates.[71] As a result, long-term care insurance premiums have been rising, often substantially, for the past decade.[72]

In response to substantial LTC premium increases, Florida law prohibits LTC rate increases that would result in a premium in excess of that charged on a newly issued policy, except to reflect benefit differences.[73] If the insurer is not writing new LTC policies, the rate cannot exceed the new business rate of insurers representing 80 percent of the carriers in the marketplace. In January 2017, the OIR issued consent orders allowing two of the state's largest LTC insurers, Metropolitan Life Insurance Company and Unum Life Insurance Company of America, to

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[67] *See* National Association of Insurance Commissioners, *A Worker's Most Valuable Asset: Protecting Your Financial Future with Disability Insurance* http://www.naic.org/documents/consumer_alert_protecting_financial_future_disability_insurance.htm (last accessed January 24, 2020).
[68] Section 627.9404(1), F.S.
[69] Florida Department of Financial Services, *Long-Term Care: A Guide for Consumers,* pg. 5. https://www.myfloridacfo.com/division/consumers/UnderstandingCoverage/Guides/documents/LTCGuide.pdf (last accessed January 24, 2020).
[70] *See* Leslie Scism, *Millions Bought Insurance to Cover Retirement Health Costs. Now They Face an Awful Choice,* Wall Street Journal (January 17, 2018), https://www.wsj.com/articles/millions-bought-insurance-to-cover-retirement-health-costs-now-they-face-an-awful-choice-1516206708 (last accessed January 24, 2020).
[71] *See* Office of Insurance Regulation, *Long-Term Care Public Rate Hearings*. (The Internet page references a rate filing decision made by the OIR on Jan. 12, 2017, related to LTC products for two insurers), https://www.floir.com/Sections/LandH/LongTermCareHearing.aspx (last accessed January 24, 2020); *See* Scism at fn. 70.
[72] *See* Scism at fn. 70; See Office of Insurance Regulation at fn. 71. https://www.floir.com/Sections/LandH/LongTermCareHearing.aspx (last accessed January 24, 2020).
[73] Section 627.9407(7)(c), F.S.

substantially raise LTC monthly premiums, phased in over 3 years.[74] Many insurers that write LTC insurance have taken substantial losses. In January 2018, General Electric announced a $6.2 billion charge against earnings and a $15 billion shortfall in insurance reserves related to LTC insurance obligations.[75]

Prohibition of Unfair Discrimination Between Individuals

Insurance policy forms for insurance sold in Florida must be filed and approved by the Office of Insurance Regulation (OIR).[76] The Unfair Insurance Trade Practices Act prohibits "knowingly making or permitting unfair discrimination between individuals of the same actuarially supportable class and expectation of life, in the rates charged for a life insurance or annuity contract, in the dividends or other benefits payable thereon, or in any other term or condition of such contract."[77] Similarly, the act prohibits knowingly making or permitting unfair discrimination between individuals of the same actuarially supportable class, as determined at the time of initial issuance of the coverage, and essentially the same hazard, in the amount of premium, policy fees, or rates charged for a policy or contract of disability insurance, in benefits payable, in the terms or conditions of the contract, or in any other manner.[78]

III. Effect of Proposed Changes:

Section 1 amends s. 627.4301, F.S., stating that life insurers and long-term care insurers may not cancel, limit, or deny coverage or establish different insurance rates based on the "genetic information" of applicants. Currently, only health insurers are expressly barred from basing coverage decisions on genetic information.

Florida law currently provides that life insurance and long-term care insurance policies are incontestable and may not be cancelled except for nonpayment of premium after 2 years in force.[79] For life insurance and long-term care insurance contracts, the prohibition on cancellations based solely on genetic information would only be relevant during the first 2 years the contract is in force. The prohibition would be relevant throughout the time a disability income policy is in-force because provisions in an insurance policy relating to disability benefits may, at the option of the insurer, be exempt from the 2-year incontestability period.

The bill defines:

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[74] *See* Office of Insurance Regulation, *Consent Order In the Matter of: Metropolitan Life Insurance Company*, Case No. 200646-16-CO (Jan. 12, 2017), https://www.floir.com/siteDocuments/MetLife200646-16-CO.pdf (last accessed January 24, 2020); Office of Insurance Regulation, *Consent Order In The Matter of Unum Life Insurance Company of America*, Case No. 200879-16-CO (Jan. 12, 2017), https://www.floir.com/siteDocuments/Unum200879-16-CO.pdf (last accessed January 24, 2020).

[75] Sonali Basak, Katherine Chiglinsky, et al, *GE's Surprise $15 Billion Shortfall Was 14 Years in the Making*, Chicago Tribune, (January 25, 2018), http://www.chicagotribune.com/business/ct-biz-ge-general-electric-accounting-20180125-story.html (last accessed January 24, 2020); Steve Lohr and Chad Bray, *At G.E., $6.2 Billion Charge for Finance Unit Hurts C.E.O.'s Turnaround Push*, New York Times, (January 16, 2018), https://www.nytimes.com/2018/01/16/business/dealbook/general-electric-ge-capital.html (last accessed January 24, 2020).

[76] Section 624.410, F.S.

[77] Section 626.9541(1)(g)1., F.S.

[78] Section 626.9541(1)(g)2., F.S.

[79] *See* ss. 627.455, F.S., and 627.94076, F.S.

- "Life insurer" to have the same meaning as provided in s. 624.602, F.S.;[80] and to include an insurer issuing life insurance contracts that grant additional benefits in the event of an insured's disability;
- "Long-term care insurer" as an insurer issuing long-term care insurance policies as described in s. 627.9404, F.S.[81]

Section 2 states that the provisions of the bill apply prospectively to policies entered into or renewed on or after January 21, 2021.

Section 3 provides an effective date of July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[80] Section 624.602, F.S., defines a life insurer as an insurer engaged in the business of issuing life insurance contracts, including contracts of combined life and health and accident insurance. Life insurance is defined as the insurance of human lives, transactions of which include annuity contracts, granting endowment benefits, providing additional benefits in the event of death or dismemberment by accident or accidental means, additional benefits in the event of the insured's disability.
[81] Section 627.9404, F.S., defines a long-term care insurance policy to mean any insurance policy or rider advertised, marketed, offered, or designed to provide coverage on an expense-incurred, indemnity, prepaid, or other basis for one or more necessary or medically necessary diagnostic, preventative, therapeutic, curing, treating, mitigating, rehabilitative, maintenance, or personal care services provided in a setting other than an acute care unit of a hospital. The definition specifies various coverages that are not long-term care insurance such as Medicare supplement coverage, disability income coverage, and others.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 627.4301, Florida Statutes.

IX. Additional Information:

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

CS/CS by Judiciary on February 11, 2020:
The committee substitute differs from the underlying bill by:

- Extending the restrictions on the use of genetic information to life insurers and long-term care insurers.
- Clarifying that the bill does not prevent life insurers from accessing an applicant's medical record as part of an application exam and does not prevent life insurers from considering medical diagnoses included in the medical record.
- Stating that the bill applies prospectively to policies entered into or renewed on or after January 21, 2021.

CS by Banking and Insurance on January 28, 2020:
The CS provides conditions under which life insurers, long-term care insurers, and disability income insurers may use genetic information, including direct-to-consumer genetic testing, in underwriting. The CS requires companies that provide direct-to-consumer genetic testing must obtain written consent from the consumer prior to sharing genetic information or personally identifiable information about a consumer with a life insurer or health insurer.

Previously, the bill prohibited such insurers from using genetic information to cancel, limit, or deny coverage, or establish differentials in premium rates, nor could such insurers require or solicit genetic information, use genetic test results, or consider a person's decisions regarding genetic testing in any manner for any insurance purpose.

B. Amendments:

None.

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

590-03504-20 20201564c2

A bill to be entitled

An act relating to genetic information for insurance purposes; amending s. 627.4301, F.S.; providing definitions; prohibiting life insurers and long-term care insurers from canceling, limiting, or denying coverage or establishing differentials in premium rates based on genetic information under certain circumstances; prohibiting such insurers from taking certain actions relating to genetic information for any insurance purpose; providing construction and applicability; providing an effective date.

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

Section 1. Section 627.4301, Florida Statutes, is amended to read:

627.4301 Genetic information for insurance purposes.—

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

(a) "Genetic information" means information derived from genetic testing to determine the presence or absence of variations or mutations, including carrier status, in an individual's genetic material or genes that are scientifically or medically believed to cause a disease, disorder, or syndrome, or are associated with a statistically increased risk of developing a disease, disorder, or syndrome, which is asymptomatic at the time of testing. Such testing does not include routine physical examinations or chemical, blood, or urine analysis, unless conducted purposefully to obtain genetic information, or questions regarding family history.

590-03504-20 20201564c2

(b) "Health insurer" means an authorized insurer offering health insurance as defined in s. 624.603, a self-insured plan as defined in s. 624.031, a multiple-employer welfare arrangement as defined in s. 624.437, a prepaid limited health service organization as defined in s. 636.003, a health maintenance organization as defined in s. 641.19, a prepaid health clinic as defined in s. 641.402, a fraternal benefit society as defined in s. 632.601, or any health care arrangement whereby risk is assumed.

(c) "Life insurer" has the same meaning as in s. 624.602 and includes an insurer issuing life insurance contracts that grant additional benefits in the event of the insured's disability.

(d) "Long-term care insurer" means an insurer that issues long-term care insurance policies as described in s. 627.9404.

(2) USE OF GENETIC INFORMATION.—

(a) In the absence of a diagnosis of a condition related to genetic information, ~~no~~ health insurers, life insurers, and long-term care insurers ~~insurer~~ authorized to transact insurance in this state may not cancel, limit, or deny coverage, or establish differentials in premium rates, based on such information.

(b) Health insurers, life insurers, and long-term care insurers may not require or solicit genetic information, use genetic test results, or consider a person's decisions or actions relating to genetic testing in any manner for any insurance purpose.

(c) This section does not apply to the underwriting or issuance of an ~~a life insurance policy, disability income~~

~~policy, long-term care policy,~~ accident-only policy, hospital indemnity or fixed indemnity policy, dental policy, or vision policy or any other actions of an insurer directly related to an ~~a life insurance policy, disability income policy, long-term care policy,~~ accident-only policy, hospital indemnity or fixed indemnity policy, dental policy, or vision policy.

(d) Nothing in this section shall be construed as preventing a life insurer from accessing an individual's medical record as part of an application exam. Nothing in this section prohibits a life insurer from considering a medical diagnosis included in an individual's medical record, even if a diagnosis was made based on the results of a genetic test.

Section 2. This act applies to policies entered into or renewed on or after January 1, 2021.

Section 3. This act shall take effect July 1, 2020.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Education, *Chair*
Appropriations
Education
Ethics and Elections
Finance and Tax
Judiciary
Rules

JOINT COMMITTEE:
Joint Select Committee on Collective Bargaining

SENATOR KELLI STARGEL
22nd District

February 13, 2020

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

Dear Chair Benacquisto:

I respectfully request that SB 1564, related to *Use of Genetic Information*, be placed on the Rules meeting agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

Kelli Stargel
State Senator, District 22

Cc: John B. Phelps/Staff Director
Cynthia Futch/AA

REPLY TO:
☐ 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803 (863) 668-3028
☐ 408 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

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

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/19/2020
Meeting Date

SB 1564
Bill Number (if applicable)

Topic Genetic Information for Insurance Purposes

Amendment Barcode (if applicable)

Name Robert Holroyd

Job Title

Address 110 SE 6th St., Fifteenth Floor
Street

Phone 954-803-0231

Fort Lauderdale FL 33301
City *State* *Zip*

Email REH@trippscott.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Association of Genetic Counselors

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 1794
INTRODUCER:	Judiciary Committee; Ethics and Elections Committee; and Senator Hutson
SUBJECT:	Constitutional Amendments
DATE:	February 17, 2020 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Roberts	EE	**Fav/CS**
2.	Stallard	Cibula	JU	**Fav/CS**
3.	Fox	Phelps	RC	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1794 modifies the process for amending the State Constitution. Most of the bill's changes apply only to citizen initiative amendments, including where the bill:

- Expands the scope of Florida Supreme Court review to include facial validity of the proposal under the U.S. Constitution.
- Narrows the role of the Financial Impact Estimating Conference (FIEC) to estimating the proposal's financial impact on state and local governments and the state budget (removing impacts to the local governments and *economies*).
- Statutorily authorizes the Senate President and House Speaker to direct legislative staff to analyze any other impacts of the proposal.
- Increases the geographic diversity and number of petition signatures that must be verified before the Secretary of State refers the proposal to the Attorney General and the FIEC.
- Creates a cause of action for citizens to challenge a petition circulator's registration.
- Provides that petition signatures are valid until the next February 1 of an even-numbered year, which prevents signatures from being held over for a subsequent election.
- Requires a supervisor of elections to charge the actual cost for verifying a petition signature in lieu of the current rule of the lesser of 10 cents/signature or the actual cost, and requiring the Department of State to determine the cost (which may not exceed $1/signature) annually by rule.
- Providing that a signature obtained illegally, including by an unregistered paid petition circulator, is invalid.

- Allowing the Division of Elections or a supervisor of elections to provide a petition form in PDF format, with printing costs to be borne by the sponsor.
- Requiring the ballot for a citizen initiative include a bold-font statement that the FIEC:
  - Estimates a positive financial impact;
  - Estimates an indeterminate financial impact;
  - Estimates a net negative impact on the state budget or cannot reach a consensus, along with indicating the *possible* negative tax and government services impacts.

Additionally, the bill requires every proposed constitutional amendment—not just one originating as a citizen initiative—to be reviewed by the FIEC and requires the ballot for every amendment to include a financial impact statement.

The bill is effective upon becoming a law and, by its express terms, applies to 2020 ballot initiatives, though it *does not* "affect the validity of any petition form gathered before the effective date of this act or any contract entered into before the effective date of this act."

II. Present Situation:

The Florida Constitution may be amended only if the voters approve an amendment originating from the Legislature, the Constitution Revision Commission, the Taxation and Budget Reform Commission, a constitutional convention, or a citizen initiative.[1] A citizen initiative must embrace only one subject (unless it concerns limiting the power of government to raise revenue),[2] but proposals originating from the other sources are not so limited.[3]

Citizen Initiative Process

The Constitution requires the sponsor of an amendment proposed by citizen initiative to obtain a specified number of signatures on a petition to place the proposal on the ballot.[4] The petition must contain the signatures of a number of voters equal to eight percent of the votes cast in the state in the preceding presidential election as well as eight percent of the vote cast in that election in each of at least half of the congressional districts of the state.[5] The number of signatures required for placement on the 2018 or 2020 ballot is 766,200, with a specified number of that total required to come from at least 14 of the state's congressional districts.[6]

Before gathering signatures for an amendment proposed by citizen initiative, the sponsor of the proposed amendment must register as a Florida political committee.[7] The sponsor must then gather the required number of signatures. The sponsor must present each signature to the appropriate supervisor of elections (supervisor) where the signee resides within 30 days after gathering the signature for validation.[8]

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[1] FLA. CONST. art. XI.
[2] FLA. CONST. art. XI s. 3.
[3] FLA. CONST art. XI, ss. 1, 2, 4, 6.
[4] FLA. CONST. art. XI, s. 3.
[5] *Id.*
[6] Florida Dep't of State, *2018 Initiative Petition Handbook*, https://dos.myflorida.com/media/697659/initiative-petitionhandbook-2018-election-cycle-eng.pdf (last visited Feb. 6, 2020) [hereinafter DOS, *Initiative Petition Handbook*].
[7] Sections 100.371(2) and 106.03, F.S.
[8] Section 100.371(7), F.S.

If the sponsor uses a paid petition circulator to gather signatures, the circulator must register with the Secretary before collecting signatures.[9] Failure of a paid petition circulator to register before collecting petition forms is a second degree misdemeanor.[10] The paid petition circulator must provide to the Secretary:

- His or her name, permanent address, temporary address, and date of birth.
- A Florida address where the circulator will accept service of process.
- A statement that the circulator consents to the jurisdiction of Florida courts.
- Any information required by the Secretary to verify the circulator's identity or address.[11]

In addition, a paid petition circulator must provide an affidavit with each petition form gathered. The affidavit must include the circulator's name and permanent address and a signed statement verifying, under penalties of perjury, that the petition was signed in the circulator's presence.[12]

The date when the elector signs the petition is presumed to be the date of collection.[13] The sponsor incurs a fine of $50 for each petition form submitted to the supervisor more than 30 days after the elector signed the petition. The sponsor incurs a fine of $500 for each petition form not submitted to the supervisor at all. If the sponsor acted willfully, the fines are raised to $250 and $1,000 per petition, respectively.[14] The sponsor can avoid fines if it shows that failure to deliver the petitions was due to *force majeure*[15] or impossibility of performance.[16] If the Secretary believes these provisions have been violated, the Secretary may refer the matter to the Attorney General for enforcement.[17]

The supervisor of elections or the Division of Elections (division) within the Department of State must provide printed petition forms to registered paid petition circulators.[18] The forms must contain information identifying the paid petition circulator.[19] The division must maintain a database of registered paid petition circulators and petition forms assigned to each, updating the database daily with respect to petition forms.[20] The supervisor must provide to the division information relating to petition forms assigned to and received from paid petition circulators.[21] When a sponsor delivers the collected signatures to the supervisor, the supervisor must check[22] each signature to ensure that the:

- Elector's original signature is recorded.

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[9] Section 100.371(3), F.S.
[10] Section 104.187, F.S. *See also* s. 104.186, F.S. (making it a first-degree misdemeanor to compensate a petition circulator based on the number of petitions gathered).
[11] Section 100.371(4), F.S.
[12] Section 100.371(5), F.S.
[13] Section 100.371(10), F.S.
[14] Section 100.371(7)(a), F.S.
[15] "*Force majeure*" refers to circumstances that cannot be foreseen or controlled, which prevent a person from completing a legal obligation. *See Black's Law Dictionary* 673 (8th ed. 2004).
[16] Section 100.371(7)(b), F.S.
[17] Section 100.371(8), F.S.
[18] Section 100.371(6), F.S.
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] The sponsor is required to pay the supervisor the sum of 10 cents per signature checked or the actual cost of checking the signatures, whichever is less. Section 99.097(4), F.S.

- Elector accurately recorded the date on which he or she signed the form.
- Elector is a qualified and registered Florida voter.
- Form on which the signature is recorded contains the elector's name, address, city, county, and voter registration number or date of birth.[23]

A petition form is invalid if any of these requirements is not met.[24] The supervisors submit their total numbers of valid signatures to the Secretary of State (Secretary).[25] Once a sponsor obtains verified signatures equal to 10 percent of the statewide requirement in at least 25 percent of Florida's congressional districts,[26] the Secretary must send the petition to the:

- Financial Impact Estimating Conference[27] to complete an analysis on the proposed amendment's fiscal impact within 75 days.[28]
- Attorney General, who in turn petitions the Florida Supreme Court for an advisory opinion as to whether:
  - The proposed amendment complies with the single-subject requirement; and
  - The ballot title and summary are clear, unambiguous, and otherwise comply with s. 101.161, F.S.[29]

Fiscal Impact Estimating Conference (FIEC)

After it receives a proposed citizen initiative amendment from the Secretary, the FIEC estimates the proposal's projected impacts on the costs and revenues of state and local governments, the state and local economies, and the state budget. The FIEC must complete two documents: a financial impact statement and an initiative financial information statement.[30]

The financial impact statement is placed on the ballot to inform voters of the financial impacts the proposed amendment will have.[31] The supervisor must include a copy of the FIEC's financial information summaries in the publication or mailing for sample ballots.

In addition, if the financial impact statement estimates that the proposal will cause increased costs, decreased revenues, a negative impact on the economy, or an indeterminate fiscal impact, the ballot must include a statement indicating such effect in **bold font**.[32]

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[23] Section 100.371(11), F.S.
[24] *Id.*
[25] *Id.*
[26] Section 15.21(3), F.S. For the 2018 and 2020 elections, the number is 76,632 and must come from at least seven congressional districts. DOS, *Initiative Petition Handbook*.
[27] The Florida Constitution provides that the Legislature must provide by general law for the provision of a statement to the public regarding the probable financial impact of any amendment proposed by initiative. FLA. CONST. art. XI, s. 5(c). The legislature created the FIEC to review, analyze, and estimate the fiscal impact of constitutional amendments proposed by citizen initiative. It consists of four persons:
one person from the Executive Office of the Governor; the coordinator of the Office of Economic and Demographic Research or a designee; one professional Senate staffer; and one professional House staffer. Section 100.371(13)(c)1., F.S.
[28] *See* s. 100.371(13), F.S. (providing for the 75-day timeframe, which is tolled when the Legislature is in session).
[29] *Advisory Opinion to the Attorney General Re: Citizenship Requirements to Vote in Florida Elections*, 2020 WL 238555 (Fla. 2020).
[30] Section 100.371(13), F.S.
[31] Section 100.371(13)(a), F.S.
[32] Section 100.371(13)(d), F.S.

The Secretary of State and the Office of Economic and Demographic Research must place the lengthier initiative financial information statement on their respective websites.[33] Each supervisor must include in the publication and mailing of sample ballots the internet addresses where the FIEC's full information statements can be viewed and a summary of the statements.[34] The supervisors also must place a summary of the information statements at each polling place, at the main office of the supervisor, upon request, and on the supervisor's website.[35]

Ballot Placement and Passage

If the Secretary determines that the sponsor has collected the required number of verified signatures by February 1 of the election year,[36] he or she assigns an amendment number and certifies the proposed amendment's ballot position.[37] When the proposal is printed on the ballot, the ballot must also include:

- A ballot summary not exceeding 75 words summarizing the proposal's purpose.
- A ballot title having a caption that does not exceed 15 words describing the proposal.
- The financial impact statement prepared by the FIEC.[38]

At the general election, if at least 60 percent of the voters voting on the proposed amendment vote yes,[39] the proposed amendment is incorporated into the Florida Constitution.[40] The amendment becomes effective on the first Tuesday after the first Monday in January following the election or on a different date if specified in the amendment.[41]

III. Effect of Proposed Changes:

Regarding proposed citizen initiative amendments, the bill changes the deadline for gathering signatures, the Fiscal Impact Estimating Conference (FIEC) analysis process, the ballot language requirements, and the requirements for supervisors of elections. The bill also subjects every proposed amendment—not just those originating as citizen initiatives—to review by the FIEC.

Petition Circulators and Petition Form Signatures

The bill creates a cause of action in circuit court for citizens to challenge a petition circulator's registration, and requires the court to enjoin a respondent not in compliance from collecting signatures or initiative petitions for compensation until such person is lawfully registered. Further, the bill invalidates any illegally-obtained signature, including ones that are collected by paid petition circulators who were not validly registered at the time they collected the signature.

[33] Section 100.371(13)(e)5., F.S.
[34] Sections 100.371(13)(e)5. and 101.20, F.S.
[35] Section 100.371(13)(e), F.S.
[36] FLA. CONST. art. XI, s. 5(b).
[37] Sections 100.371(12) and 101.161, F.S.
[38] Section 101.161(1), F.S.
[39] FLA. CONST. art. XI, s. 5(e).
[40] *Id.*
[41] *Id.*

The bill also provides that a signature on a petition form is valid only until February 1 of the next even-numbered year instead of for two years from the date signed. This change ties the current two-year signature validity period to the Secretary's ballot designation deadline.

Analysis of the Projected Impacts of Proposed Amendments

The bill changes the process for the Secretary of State to refer a proposed citizen initiative amendment for further analysis by increasing the number of verified signatures required to trigger the referral of a citizen initiative. Current law requires that the verified signatures equal 10 percent of the signatures required to place an initiative on the ballot. Moreover, the signatures must be comprised of at least 10 percent of the electors[42] in each of one-eighth of the congressional districts. The bill requires that the verified signatures equal 33 percent of the signatures required to place an initiative on the ballot. The bill also requires that this threshold be met in each of at least two-thirds of the state's congressional districts.

Once the threshold for referral is met, the bill requires the Secretary to refer the proposed citizen initiative amendment to the Senate President and House Speaker in addition to the Attorney General and the FIEC.

The Senate President and House Speaker are authorized by the bill to direct legislative staff to conduct an analysis of a citizen initiative proposal, which may include, but is not limited to, whether the proposal:

- Has undefined terms;
- Conflicts with an existing provision of the Florida Constitution; or,
- Will cause unintended consequences or economic impacts.

Finally, the bill requires the Attorney General, upon petitioning the Florida Supreme Court to review the legality of a proposed citizen initiative amendment, to ask the Court whether it is facially invalid under the United States Constitution.

All Amendments Subjected to (Modified) FIEC Review

The bill subjects *all* proposed amendments[43] —not just those originating as citizen initiatives—to FIEC analysis, which the bill modifies. Particularly, the FIEC is no longer required to estimate the proposal's projected impacts on the state and local economies. The FIEC must still produce a financial impact statement estimating the proposal's:

- Effect on increasing or decreasing revenues or costs to state or local governments; and,
- Overall impact to the state budget.

[42] For this purpose, the number of electors is the number that voted in the last presidential election.
[43] The other sources from which an amendment may originate are the Legislature, the Constitution Revision Commission, the Taxation and Budget Reform Commission, and a constitutional convention.

Ballot Requirements – Financial Impact Estimation

As the bill subjects all proposed amendments to FIEC review, it also requires the ballot for any amendment to include a financial impact statement. Additionally, the ballot for any amendment must include a statement in bold capital font indicating that the FIEC:

- Estimates that the proposal will have a net negative impact on the state budget;
- Cannot determine the proposal's financial impact due to ambiguities and uncertainties surrounding the amendment's impact;
- Is unable to reach a consensus on the proposal's financial impact; or
- Estimates that the proposal will have a positive impact on the state budget which may result in generating additional revenue.

If the first or third statement is included on the ballot, the statement must declare that the amendment "may result in higher taxes or a loss of government services in order to maintain a balanced State budget as required by the constitution."

Supervisors of Elections

The bill requires a supervisor of elections to:

- Verify signatures within 60 days after receipt of the petition forms and the required fees, instead of within 30 days as under current law.
- Provide a copy of the proposed amendment text in each in a designated area of each polling location as determined by the supervisor. The Department of State is required to print and furnish each supervisor with a sufficient number of copies of the amendment in either poster or booklet form.
- Charge the actual cost for checking a petition form, as opposed to charging the lesser of the actual cost or 10 cents per signature. But the Department of State must determine the actual per-signature cost (which may not exceed $1), promulgate the cost by rule in the Florida Administrative Code, and update the cost determination annually.

The bill also gives a supervisor of elections the *option* to provide petition forms to a sponsor in PDF format instead of requiring that the supervisor print the forms. This effectively shifts the printing costs for petition forms to the sponsor instead of the supervisor.

Severability Clause and Effective Date

The bill provides that if any provision contained within the bill is held invalid, the remaining portion of the bill, "to the fullest extent possible, shall be severed from the void portion and given the fullest possible force and application.

The bill is effective upon becoming a law, and its changes apply to all initiative amendments proposed for the 2020 ballot. However, nothing in the bill affects the validity of a:

- Petition form gathered before the effective date.
- Contract entered into before the effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Initiative Petition Sponsors/Paid-Petition Gatherers
Allowing a supervisor to provide petition forms to initiative sponsors in PDF format instead of providing printed forms will likely increase a sponsor's printing costs. The costs are indeterminate at this time, and will vary from election-to-election and by county, based on the county's size and the number of initiatives/petitions involved.

Further, requiring initiative sponsors to remit to supervisors the *actual* cost of signature verification (in lieu of the current rule: the lesser of the actual cost or 10 cents per signature) may result in additional costs or additional savings to sponsors, depending on how efficient each county is at performing this task and the approach of the Department of State rule determining the actual costs.

C. Government Sector Impact:

State
Recurring Costs

The court system is anticipated to incur additional costs for proceedings challenging a petition circulator's registration status and Supreme Court proceedings to determine whether a proposed amendment facially invalid under the U.S. Constitution.[44] Additionally, as the bill requires the FIEC to review of all proposed constitutional amendments, the costs associated with the reviews might increase.

Recurring Savings
The bill provides an indeterminate positive impact on state government by: limiting the FIEC's role in analyzing a proposed amendment and delaying formal review of the proposed initiative until the collection of additional verified signatures.

Local
Recurring Savings
Allowing county supervisor of elections the option to provide petition forms to initiative sponsors in PDF format instead of requiring that the supervisor print the forms could reduce a supervisors printing costs. The cost savings is indeterminate at this time, and will vary from election-to-election and by county.

Recurring Costs
The additional ballot statements that the bill mandates with respect to proposed amendments could lengthen the ballot, resulting in greater printing costs. As this situation will vary from county-to-county, the cost is indeterminate at this time.

Recurring Savings/Costs
Requiring initiative petition sponsors to remit to supervisors the actual cost of signature verification (in lieu of the current rule: the lesser of the actual cost or 10 cents per signature) may result in additional costs or additional savings, depending on how efficient each county is at performing this task and the approach of the Department of State rule governing the actual costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 15.21, 16.061, 100.371, 101.161, and 101.171.

The bill creates section 101.162 of the Florida Statutes.

[44] *See* Office of the State Courts Administrator, *2020 Judicial Impact Statement for SB 1794*, Jan. 26, 2020 (analyzing the original version of the bill).

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 February 11, 2020:
The committee substitute changes the underlying bill by:

- Decreasing the overall number of signatures that a citizen initiative must receive to trigger a review by the Supreme Court and the FIEC, but requiring that more congressional districts each meet a certain threshold in order to trigger the review;
- Capping the fee that can be charged to verify a citizen initiative petition at $1;
- Requiring the ballot to state, when applicable, that the FIEC expects an amendment to have a positive net impact on the state budget;
- Removing the requirement that a copy of a proposed constitutional amendment be placed in each voting booth;
- Removing the requirement that a political committee supporting a citizen initiative report the percentage of its total contributions from in-state persons;
- Removing the requirement that a ballot include the name of a citizen initiative's sponsor, the percentage of contributions received from in-state persons, and whether out-of-state petition circulators were used;
- Subjecting all proposed amendments to the same FIEC review that is required of only citizen initiative amendments in the underlying bill; and
- Requiring the ballot on which any amendment appears to include the financial impact statement currently required for citizen initiative amendments.

CS by Ethics and Elections on January 27, 2020:
The CS adopts verbatim HB 7037, *sans* some technical changes. Substantively, the CS is very similar to the original bill with the following major differences:

- Restores current law requiring the Florida Impact Estimating Conference (FIEC) to consider impacts on ***local*** governments when drafting the financial impact statement, as opposed to *State-only* impacts.
- Pares back the additional Supreme Court review authority that the original SB granted, expanding current law to include *only* an additional facial *federal* constitutional review.

B. Amendments:

None.

763622

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Rules (Rodriguez) recommended the following:

Senate Amendment (with title amendment)

Before line 66
insert:
Section 1. This act may be cited as the "Direct Democracy Limitation Act."

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete line 2
and insert:

763622

An act relating to constitutional amendments;
providing a short title; amending

258150

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Rules (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 83 - 85

and insert:

electors statewide required by s. 3, Art. XI of the State Constitution ~~and~~ in one-half ~~at least one-fourth~~ of the congressional districts of the state ~~required by s. 3, Art. XI of the State Constitution~~.

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

And the title is amended as follows:

Delete line 6

and insert:

verified; increasing the signature threshold at which the Secretary of State must transmit initiative petitions to the Attorney General and the Legislature for review; amending s. 16.061, F.S.; requiring the

640730

LEGISLATIVE ACTION

Senate . House

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The Committee on Rules (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 143 - 144

and insert:

this subsection and shall update the cost annually.

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

And the title is amended as follows:

Delete lines 20 - 21

and insert:

Department of State to adopt certain rules;

641890

LEGISLATIVE ACTION

Senate . House

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The Committee on Rules (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 248 - 538

and insert:

2. If the financial impact statement estimates an indeterminate financial impact, the ballot must include the statement required by s. 101.161(1)(c).

3. If the members of the Financial Impact Estimating Conference are unable to agree on the statement required by this subsection, the ballot must include the statement required by s. 101.161(1)(d).


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(e)1. Any financial impact statement that the Supreme Court finds not to be in accordance with this subsection shall be remanded solely to the Financial Impact Estimating Conference for redrafting, provided the court's advisory opinion is rendered at least 75 days before the election at which the question of ratifying the amendment will be presented. The Financial Impact Estimating Conference shall prepare and adopt a revised financial impact statement no later than 5 p.m. on the 15th day after the date of the court's opinion.

2. If, by 5 p.m. on the 75th day before the election, the Supreme Court has not issued an advisory opinion on the initial financial impact statement prepared by the Financial Impact Estimating Conference for an initiative amendment that otherwise meets the legal requirements for ballot placement, the financial impact statement shall be deemed approved for placement on the ballot.

3. In addition to the financial impact statement required by this subsection, the Financial Impact Estimating Conference shall draft an initiative financial information statement. The initiative financial information statement should describe in greater detail than the financial impact statement any projected increase or decrease in revenues or costs that the state or local governments would likely experience ~~and the estimated economic impact on the state and local economy~~ if the ballot measure were approved. If appropriate, the initiative financial information statement may include both estimated dollar amounts and a description placing the estimated dollar amounts into context. The initiative financial information statement must include both a summary of not more than 500 words and additional


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detailed information that includes the assumptions that were made to develop the financial impacts, workpapers, and any other information deemed relevant by the Financial Impact Estimating Conference.

4. The Department of State shall have printed, and shall furnish to each supervisor of elections, a copy of the summary from the initiative financial information statements. The supervisors shall have the summary from the initiative financial information statements available at each polling place and at the main office of the supervisor of elections upon request.

5. The Secretary of State and the Office of Economic and Demographic Research shall make available on the Internet each initiative financial information statement in its entirety. In addition, each supervisor of elections whose office has a website shall post the summary from each initiative financial information statement on the website. Each supervisor shall include a copy of each summary from the initiative financial information statements and the Internet addresses for the information statements on the Secretary of State's and the Office of Economic and Demographic Research's websites in the publication or mailing required by s. 101.20.

(f) When the Secretary of State submits a proposed initiative petition to the President of the Senate and the Speaker of the House of Representatives pursuant to s. 15.21, the President of the Senate and the Speaker of the House of Representatives may direct legislative staff to prepare an analysis of the petition. Such analysis may include, but is not limited to, whether the amendment has undefined terms, conflicts with an existing provision of the State Constitution, or will

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cause unintended consequences or economic impacts.

Section 4. Subsection (1) of section 101.161, Florida Statutes, is amended to read:

101.161 Referenda; ballots.—

(1) Whenever a constitutional amendment or other public measure is submitted to the vote of the people, a ballot summary of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot after the list of candidates, followed by the word "yes" and also by the word "no," and shall be styled in such a manner that a "yes" vote will indicate approval of the proposal and a "no" vote will indicate rejection. The ballot summary of the amendment or other public measure and the ballot title to appear on the ballot shall be embodied in the constitutional revision commission proposal, constitutional convention proposal, taxation and budget reform commission proposal, or enabling resolution or ordinance. The ballot summary of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. In addition, for every constitutional amendment proposed by initiative, the ballot shall include, following the ballot summary, in the following order:

(a) A separate financial impact statement concerning the measure prepared by the Financial Impact Estimating Conference in accordance with s. 100.371(13) ~~s. 100.371(5)~~.

(b) If the financial impact statement projects a net negative impact on the state budget, the following statement in bold print:

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THIS PROPOSED CONSTITUTIONAL AMENDMENT IS ESTIMATED TO HAVE A NET NEGATIVE IMPACT ON THE STATE BUDGET. THIS IMPACT MAY RESULT IN HIGHER TAXES OR A LOSS OF GOVERNMENT SERVICES IN ORDER TO MAINTAIN A BALANCED STATE BUDGET AS REQUIRED BY THE CONSTITUTION.

(c) If the financial impact statement is indeterminate, the following statement in bold print:

THE FINANCIAL IMPACT OF THIS AMENDMENT CANNOT BE DETERMINED DUE TO AMBIGUITIES AND UNCERTAINTIES SURROUNDING THE AMENDMENT'S IMPACT.

(d) If the members of the Financial Impact Estimating Conference are unable to agree on the financial impact statement, the following statement in bold print:

THE FINANCIAL IMPACT ESTIMATING CONFERENCE WAS UNABLE TO AGREE ON THE FINANCIAL IMPACT OF THIS PROPOSED CONSTITUTIONAL AMENDMENT. THIS AMENDMENT MAY RESULT IN HIGHER TAXES OR A LOSS OF GOVERNMENT SERVICES IN ORDER TO MAINTAIN A BALANCED STATE BUDGET AS REQUIRED BY THE CONSTITUTION.

The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of. This subsection does not apply to constitutional amendments or revisions proposed by joint resolution.

Section 5. Section 101.171, Florida Statutes, is amended to

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read:

101.171 Copy of constitutional amendment to be available at voting locations.—Whenever any amendment to the State Constitution is to be voted upon at any election, the Department of State shall have printed and shall furnish to each supervisor of elections a sufficient number of copies of the amendment either in poster or booklet form, and the supervisor shall provide ~~have~~ a copy in a designated area of each polling location as determined by the supervisor ~~thereof conspicuously posted or available at each polling room or early voting area upon the day of election~~.

Section 6. The provisions of this act apply to revisions or amendments to the State Constitution proposed by initiative which are proposed for the

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

And the title is amended as follows:

Delete lines 34 - 58

and insert:

constitutional amendments proposed by initiative include certain disclosures and statements, in a specified order; amending s.

By the Committees on Judiciary; and Ethics and Elections; and Senator Hutson

590-03497-20 20201794c2

A bill to be entitled

An act relating to constitutional amendments; amending s. 15.21, F.S.; requiring the Secretary of State to submit an initiative petition to the Legislature when a certain amount of signatures are obtained and verified; amending s. 16.061, F.S.; requiring the Attorney General to request the Supreme Court to address in an advisory opinion the facial validity of the proposed amendment under the United States Constitution; amending s. 100.371, F.S.; providing that a citizen may challenge in circuit court a petition circulator's registration with the Secretary of State; authorizing the Division of Elections or a supervisor of elections to provide petition forms in a certain electronic format; revising the length of time that a signature on a petition form is valid; revising the timeframe within which the supervisor must verify petition forms; requiring the supervisor to charge the actual cost of verifying petition forms; requiring the Department of State to adopt certain rules; providing a limitation on the cost of signature verification; revising the circumstances under which a petition form is deemed valid; requiring the Secretary of State to submit a copy of an initiative petition to the Financial Impact Estimating Conference; revising requirements for the Financial Impact Estimating Conference's analysis of a proposed initiative's economic impact; requiring certain ballot language based on the findings of the Financial Impact

590-03497-20 20201794c2

Estimating Conference; authorizing the use of legislative staff to analyze the effects of a citizen initiative under certain circumstances; amending s. 101.161, F.S.; requiring that ballots containing constitutional amendments include certain disclosures and statements, in a specified order; conforming provisions to changes made by the act; creating s. 101.162, F.S.; requiring the Secretary of State to submit constitutional amendments or revisions proposed by specified means to the Financial Impact Estimating Conference; requiring the Financial Impact Estimating Conference to complete an analysis of the amendment or revision within a specified timeframe; requiring the Financial Impact Estimating Conference to submit the completed financial impact statement to the Secretary of State and the Attorney General; requiring the coordinator of the Office of Economic and Demographic Research to provide certain notification to interested parties; prescribing requirements and responsibilities of the Financial Impact Estimating Conference; specifying timeframes and procedures for challenges and redrafting of financial impact statements; prescribing the form of the financial impact statement; requiring the Financial Impact Estimating Conference to draft a financial information statement; specifying requirements for such statements; requiring that financial information statements be made available at specified locations and posted on the Internet; providing applicability; amending s.

101.171, F.S.; revising requirements regarding the availability of copies of constitutional amendments at polling locations; providing applicability; providing for severability; providing an effective date.

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

Section 1. Section 15.21, Florida Statutes, is amended to read:

15.21 Initiative petitions; s. 3, Art. XI, State Constitution.—The Secretary of State shall immediately submit an initiative petition to the Attorney General, the President of the Senate, and the Speaker of the House of Representatives ~~and to the Financial Impact Estimating Conference~~ if the sponsor has:

(1) Registered as a political committee pursuant to s. 106.03;

(2) Submitted the ballot title, substance, and text of the proposed revision or amendment to the Secretary of State pursuant to ss. 100.371 and 101.161; and

(3) Obtained a letter from the Division of Elections confirming that the sponsor has submitted to the appropriate supervisors for verification, and the supervisors have verified, forms signed and dated equal to 33 ~~10~~ percent of the number of electors statewide and in at least two-thirds ~~one-fourth~~ of the congressional districts required by s. 3, Art. XI of the State Constitution.

Section 2. Subsection (1) of section 16.061, Florida Statutes, is amended to read:

16.061 Initiative petitions.—

(1) The Attorney General shall, within 30 days after receipt of a proposed revision or amendment to the State Constitution by initiative petition from the Secretary of State, petition the Supreme Court, requesting an advisory opinion regarding the compliance of the text of the proposed amendment or revision with s. 3, Art. XI of the State Constitution, whether the proposed amendment is facially invalid under the United States Constitution, and the compliance of the proposed ballot title and substance with s. 101.161. The petition may enumerate any specific factual issues that the Attorney General believes would require a judicial determination.

Section 3. Subsections (3), (6), (11), and (13) of section 100.371, Florida Statutes, are amended to read:

100.371 Initiatives; procedure for placement on ballot.—

(3)(a) A person may not collect signatures or initiative petitions for compensation unless the person is registered as a petition circulator with the Secretary of State.

(b) A citizen may challenge a petition circulator's registration under this section by filing a petition in circuit court. If the court finds that the respondent is not a registered petition circulator, the court may enjoin the respondent from collecting signatures or initiative petitions for compensation until she or he is lawfully registered.

(6) The division or the supervisor of elections shall make hard copy petition forms or electronic portable document format petition forms available to registered petition circulators. All such forms must contain information identifying the petition circulator to which the forms are provided. The division shall

maintain a database of all registered petition circulators and the petition forms assigned to each. Each supervisor of elections shall provide to the division information on petition forms assigned to and received from petition circulators. The information must be provided in a format and at times as required by the division by rule. The division must update information on petition forms daily and make the information publicly available.

(11) An initiative petition form circulated for signature may not be bundled with or attached to any other petition. Each signature shall be dated when made and shall be valid until the next February 1 occurring in an even-numbered year for the purpose of the amendment appearing on the ballot for the general election occurring in that same year ~~for a period of 2 years following such date~~, provided all other requirements of law are met. The sponsor shall submit signed and dated forms to the supervisor of elections for the county of residence listed by the person signing the form for verification of the number of valid signatures obtained. If a signature on a petition is from a registered voter in another county, the supervisor shall notify the petition sponsor of the misfiled petition. The supervisor shall promptly verify the signatures within 60 ~~30~~ days after receipt of the petition forms and payment of a ~~the~~ fee for the actual cost of signature verification incurred by the supervisor ~~required by s. 99.097~~. The Department of State shall adopt rules to set the cost to verify a petition under this subsection and shall update the cost annually; however, the actual cost to verify a petition may not exceed $1 per petition. The supervisor shall promptly record, in the manner prescribed

by the Secretary of State, the date each form is received by the supervisor, and the date the signature on the form is verified as valid. The supervisor may verify that the signature on a form is valid only if:

(a) The form contains the original signature of the purported elector.

(b) The purported elector has accurately recorded on the form the date on which he or she signed the form.

(c) The form sets forth the purported elector's name, address, city, county, and voter registration number or date of birth.

(d) The purported elector is, at the time he or she signs the form and at the time the form is verified, a duly qualified and registered elector in the state.

(e) The signature was obtained legally, including that if a paid petition circulator was used, the circulator was validly registered under subsection (3) when the signature was obtained.

The supervisor shall retain the signature forms for at least 1 year following the election in which the issue appeared on the ballot or until the Division of Elections notifies the supervisors of elections that the committee that circulated the petition is no longer seeking to obtain ballot position.

(13)(a) At the same time the Secretary of State submits an initiative petition to the Attorney General, the President of the Senate, and the Speaker of the House of Representatives pursuant to s. 15.21, the secretary shall submit a copy of the initiative petition to the Financial Impact Estimating Conference. Within 75 days after receipt of a proposed revision

or amendment to the State Constitution by initiative petition from the Secretary of State, the Financial Impact Estimating Conference shall complete an analysis and financial impact statement to be placed on the ballot of the estimated increase or decrease in any revenues or costs to state or local governments~~, estimated economic impact on the state and local economy,~~ and the overall impact to the state budget resulting from the proposed initiative. The 75-day time limit is tolled when the Legislature is in session. The Financial Impact Estimating Conference shall submit the financial impact statement to the Attorney General and Secretary of State.

(b) Immediately upon receipt of a proposed revision or amendment from the Secretary of State, the coordinator of the Office of Economic and Demographic Research shall contact the person identified as the sponsor to request an official list of all persons authorized to speak on behalf of the named sponsor and, if there is one, the sponsoring organization at meetings held by the Financial Impact Estimating Conference. All other persons shall be deemed interested parties or proponents or opponents of the initiative. The Financial Impact Estimating Conference shall provide an opportunity for any representatives of the sponsor, interested parties, proponents, or opponents of the initiative to submit information and may solicit information or analysis from any other entities or agencies, including the Office of Economic and Demographic Research.

(c) All meetings of the Financial Impact Estimating Conference shall be open to the public. The President of the Senate and the Speaker of the House of Representatives, jointly, shall be the sole judge for the interpretation, implementation,

and enforcement of this subsection.

1. The Financial Impact Estimating Conference is established to review, analyze, and estimate the financial impact of amendments to or revisions of the State Constitution proposed by initiative. The Financial Impact Estimating Conference shall consist of four principals: one person from the Executive Office of the Governor; the coordinator of the Office of Economic and Demographic Research, or his or her designee; one person from the professional staff of the Senate; and one person from the professional staff of the House of Representatives. Each principal shall have appropriate fiscal expertise in the subject matter of the initiative. A Financial Impact Estimating Conference may be appointed for each initiative.

2. Principals of the Financial Impact Estimating Conference shall reach a consensus or majority concurrence on a clear and unambiguous financial impact statement, no more than 150 words in length, and immediately submit the statement to the Attorney General. Nothing in this subsection prohibits the Financial Impact Estimating Conference from setting forth a range of potential impacts in the financial impact statement. Any financial impact statement that a court finds not to be in accordance with this section shall be remanded solely to the Financial Impact Estimating Conference for redrafting. The Financial Impact Estimating Conference shall redraft the financial impact statement within 15 days.

3. If ~~the members of the Financial Impact Estimating Conference are unable to agree on the statement required by this subsection, or if~~ the Supreme Court has rejected the initial

submission by the Financial Impact Estimating Conference and no redraft has been approved by the Supreme Court by 5 p.m. on the 75th day before the election, the following statement shall appear on the ballot ~~pursuant to s. 101.161(1)~~: "The ~~financial~~ impact of this measure, if any, has not been ~~cannot be reasonably~~ determined at this time."

(d) The financial impact statement must be separately contained and be set forth after the ballot summary as required in s. 101.161(1).

1. If the financial impact statement projects a net ~~estimates increased costs, decreased revenues, a~~ negative impact on the state budget ~~or local economy, or an indeterminate impact for any of these areas~~, the ballot must include the ~~a~~ statement required by s. 101.161(1)(b) ~~indicating such estimated effect in bold font~~.

2. If the financial impact statement projects a net positive impact on the state budget, the ballot must include the statement required by s. 101.161(1)(c).

3. If the financial impact statement estimates an indeterminate financial impact, the ballot must include the statement required by s. 101.161(1)(d).

4. If the members of the Financial Impact Estimating Conference are unable to agree on the statement required by this subsection, the ballot must include the statement required by s. 101.161(1)(e).

(e)1. Any financial impact statement that the Supreme Court finds not to be in accordance with this subsection shall be remanded solely to the Financial Impact Estimating Conference for redrafting, provided the court's advisory opinion is

rendered at least 75 days before the election at which the question of ratifying the amendment will be presented. The Financial Impact Estimating Conference shall prepare and adopt a revised financial impact statement no later than 5 p.m. on the 15th day after the date of the court's opinion.

2. If, by 5 p.m. on the 75th day before the election, the Supreme Court has not issued an advisory opinion on the initial financial impact statement prepared by the Financial Impact Estimating Conference for an initiative amendment that otherwise meets the legal requirements for ballot placement, the financial impact statement shall be deemed approved for placement on the ballot.

3. In addition to the financial impact statement required by this subsection, the Financial Impact Estimating Conference shall draft an initiative financial information statement. The initiative financial information statement should describe in greater detail than the financial impact statement any projected increase or decrease in revenues or costs that the state or local governments would likely experience ~~and the estimated economic impact on the state and local economy~~ if the ballot measure were approved. If appropriate, the initiative financial information statement may include both estimated dollar amounts and a description placing the estimated dollar amounts into context. The initiative financial information statement must include both a summary of not more than 500 words and additional detailed information that includes the assumptions that were made to develop the financial impacts, workpapers, and any other information deemed relevant by the Financial Impact Estimating Conference.

4. The Department of State shall have printed, and shall furnish to each supervisor of elections, a copy of the summary from the initiative financial information statements. The supervisors shall have the summary from the initiative financial information statements available at each polling place and at the main office of the supervisor of elections upon request.

5. The Secretary of State and the Office of Economic and Demographic Research shall make available on the Internet each initiative financial information statement in its entirety. In addition, each supervisor of elections whose office has a website shall post the summary from each initiative financial information statement on the website. Each supervisor shall include a copy of each summary from the initiative financial information statements and the Internet addresses for the information statements on the Secretary of State's and the Office of Economic and Demographic Research's websites in the publication or mailing required by s. 101.20.

(f) When the Secretary of State submits a proposed initiative petition to the President of the Senate and the Speaker of the House of Representatives pursuant to s. 15.21, the President of the Senate and the Speaker of the House of Representatives may direct legislative staff to prepare an analysis of the petition. Such analysis may include, but is not limited to, whether the amendment has undefined terms, conflicts with an existing provision of the State Constitution, or will cause unintended consequences or economic impacts.

Section 4. Subsection (1) and paragraph (a) of subsection (3) of section 101.161, Florida Statutes, are amended to read:

101.161 Referenda; ballots.—

(1) Whenever a constitutional amendment or other public measure is submitted to the vote of the people, a ballot summary of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot after the list of candidates, followed by the word "yes" and also by the word "no," and shall be styled in such a manner that a "yes" vote will indicate approval of the proposal and a "no" vote will indicate rejection. The ballot summary of the amendment or other public measure and the ballot title to appear on the ballot shall be embodied in the constitutional revision commission proposal, constitutional convention proposal, taxation and budget reform commission proposal, or enabling resolution or ordinance. The ballot summary of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. In addition, for every constitutional amendment ~~proposed by initiative~~, the ballot shall include, following the ballot summary, in the following order:

(a) A separate financial impact statement concerning the measure prepared by the Financial Impact Estimating Conference in accordance with s. 100.371(13) or s. 101.162, as applicable ~~s. 100.371(5)~~.

(b) If the financial impact statement projects a net negative impact on the state budget, the following statement in bold print:

THIS PROPOSED CONSTITUTIONAL AMENDMENT IS ESTIMATED TO HAVE A NET NEGATIVE IMPACT ON THE STATE BUDGET. THIS IMPACT MAY RESULT IN HIGHER TAXES OR A LOSS OF

GOVERNMENT SERVICES IN ORDER TO MAINTAIN A BALANCED STATE BUDGET AS REQUIRED BY THE CONSTITUTION.

(c) If the financial impact statement projects a net positive impact on the state budget, the following statement in bold print:

THIS PROPOSED CONSTITUTIONAL AMENDMENT IS ESTIMATED TO HAVE A NET POSITIVE IMPACT ON THE STATE BUDGET. THIS IMPACT MAY RESULT IN GENERATING ADDITIONAL REVENUE.

(d) If the financial impact statement is indeterminate, the following statement in bold print:

THE FINANCIAL IMPACT OF THIS AMENDMENT CANNOT BE DETERMINED DUE TO AMBIGUITIES AND UNCERTAINTIES SURROUNDING THE AMENDMENT'S IMPACT.

(e) If the members of the Financial Impact Estimating Conference are unable to agree on the financial impact statement, the following statement in bold print:

THE FINANCIAL IMPACT ESTIMATING CONFERENCE WAS UNABLE TO AGREE ON THE FINANCIAL IMPACT OF THIS PROPOSED CONSTITUTIONAL AMENDMENT. THIS AMENDMENT MAY RESULT IN HIGHER TAXES OR A LOSS OF GOVERNMENT SERVICES IN ORDER TO MAINTAIN A BALANCED STATE BUDGET AS REQUIRED BY THE CONSTITUTION.

The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of. Except as otherwise specifically provided in paragraph (3)(a), this subsection does not apply to constitutional amendments or revisions proposed by joint resolution.

(3)(a) Each joint resolution that proposes a constitutional amendment or revision shall include one or more ballot statements set forth in order of priority. Each ballot statement shall consist of a ballot title, by which the measure is commonly referred to or spoken of, not exceeding 15 words in length, and a ballot summary that describes the chief purpose of the amendment or revision in clear and unambiguous language. If a joint resolution that proposes a constitutional amendment or revision contains only one ballot statement, the ballot summary may not exceed 75 words in length. If a joint resolution that proposes a constitutional amendment or revision contains more than one ballot statement, the first ballot summary, in order of priority, may not exceed 75 words in length. In addition, a constitutional amendment or revision proposed by joint resolution must include a financial impact statement following the ballot summary when appearing on the ballot in accordance with paragraphs (1)(a)-(e).

Section 5. Section 101.162, Florida Statutes, is created to read:

101.162 Financial impact statements.—

(1) Upon filing or certification of a constitutional amendment or revision with the Department of State, the Secretary of State shall transmit the amendment or revision

proposed by joint resolution, the Constitution Revision Commission, the Taxation and Budget Reform Commission, or constitutional convention to the Financial Impact Estimating Conference. Within 75 days after receipt of a proposed revision or amendment to the State Constitution from the Secretary of State, the Financial Impact Estimating Conference shall complete an analysis and financial impact statement to be placed on the ballot of the estimated increase or decrease in any revenues or costs to state or local governments and the overall impact to the state budget resulting from the amendment or revision. The 75-day time limit is tolled when the Legislature is in session. The Financial Impact Estimating Conference shall submit the financial impact statement to the Attorney General and Secretary of State.

(2) Immediately upon receipt of a proposed amendment or revision from the Secretary of State, the coordinator of the Office of Economic and Demographic Research may notify any interested parties or proponents or opponents of the amendment or revision. The Financial Impact Estimating Conference shall provide an opportunity for any interested parties or proponents or opponents of the amendment or revision to submit information and may solicit information or analysis from any other entities or agencies, including the Office of Economic and Demographic Research.

(3) All meetings of the Financial Impact Estimating Conference shall be open to the public. The President of the Senate and the Speaker of the House of Representatives, jointly, shall be the sole judge for the interpretation, implementation, and enforcement of this section.

(a) The Financial Impact Estimating Conference, established under s. 100.371(13), shall review, analyze, and estimate the financial impact of amendments to or revisions of the State Constitution proposed by joint resolution, the Constitution Revision Commission, the Taxation and Budget Reform Commission, or constitutional convention.

(b) Principals of the Financial Impact Estimating Conference shall reach a consensus or majority concurrence on a clear and unambiguous financial impact statement, no more than 150 words in length, and immediately submit the statement to the Attorney General. Nothing in this section prohibits the Financial Impact Estimating Conference from setting forth a range of potential impacts in the financial impact statement. Any financial impact statement that a court finds not to be in accordance with this section shall be remanded solely to the Financial Impact Estimating Conference for redrafting. The Financial Impact Estimating Conference shall redraft the financial impact statement within 15 days.

(c) If the Supreme Court has rejected the initial submission by the Financial Impact Estimating Conference and no redraft has been approved by the Supreme Court by 5 p.m. on the 75th day before the election, the following statement shall appear on the ballot: “The impact of this measure, if any, cannot be reasonably determined at this time.”

(4) The financial impact statement must be separately contained and be set forth after the ballot summary as required in s. 101.161(1).

(a) If the financial impact statement projects a net negative impact on the state budget, the ballot must include the

statement required by s. 101.161(1)(b).

(b) If the financial impact statement projects a net positive impact on the state budget, the ballot must include the statement required by s. 101.161(1)(c).

(c) If the financial impact statement estimates an indeterminate financial impact, the ballot must include the statement required by s. 101.161(1)(d).

(d) If the members of the Financial Impact Estimating Conference are unable to agree on the statement required by this subsection, the ballot must include the statement required by s. 101.161(1)(e).

(5)(a) Any financial impact statement that the Supreme Court finds not to be in accordance with this section shall be remanded solely to the Financial Impact Estimating Conference for redrafting, provided the court's advisory opinion is rendered at least 75 days before the election at which the question of ratifying the amendment will be presented. The Financial Impact Estimating Conference shall prepare and adopt a revised financial impact statement no later than 5 p.m. on the 15th day after the date of the court's opinion.

(b) If, by 5 p.m. on the 75th day before the election, the Supreme Court has not issued an advisory opinion on the initial financial impact statement prepared by the Financial Impact Estimating Conference for an amendment that otherwise meets the legal requirements for ballot placement, the financial impact statement shall be deemed approved for placement on the ballot.

(6)(a) In addition to the financial impact statement required by this section, the Financial Impact Estimating Conference shall draft a financial information statement. The

financial information statement should describe in greater detail than the financial impact statement any projected increase or decrease in revenues or costs that the state or local governments would likely experience if the ballot measure were approved. If appropriate, the financial information statement may include both estimated dollar amounts and a description placing the estimated dollar amounts into context. The financial information statement must include both a summary of not more than 500 words and additional detailed information that includes the assumptions that were made to develop the financial impacts, workpapers, and any other information deemed relevant by the Financial Impact Estimating Conference.

(b) The Department of State shall have printed, and shall furnish to each supervisor of elections, a copy of the summary from the financial information statements. The supervisors shall have the summary from the financial information statements available at each polling place and at the main office of the supervisor of elections upon request.

(c) The Secretary of State and the Office of Economic and Demographic Research shall make available on the Internet each financial information statement in its entirety. In addition, each supervisor of elections whose office has a website shall post the summary from each financial information statement on the website. Each supervisor shall include a copy of each summary from the financial information statements and the Internet addresses for the information statements on the Secretary of State's and the Office of Economic and Demographic Research's websites in the publication or mailing required by s. 101.20.

(7) This section does not apply to constitutional amendments proposed by initiative.

Section 6. Section 101.171, Florida Statutes, is amended to read:

101.171 Copy of constitutional amendment to be available at voting locations.—Whenever any amendment to the State Constitution is to be voted upon at any election, the Department of State shall have printed and shall furnish to each supervisor of elections a sufficient number of copies of the amendment either in poster or booklet form, and the supervisor shall provide ~~have~~ a copy in a designated area of each polling location as determined by the supervisor ~~thereof conspicuously posted or available at each polling room or early voting area upon the day of election~~.

Section 7. The provisions of this act apply to revisions or amendments to the State Constitution which are proposed for the 2020 general election and each election thereafter; provided, however, that nothing in this act affects the validity of any petition form gathered before the effective date of this act or any contract entered into before the effective date of this act. Petition forms gathered before the effective date of this act shall be governed by the laws existing at the time that the form was initially gathered.

Section 8. If any provision of this act or its application to any person or circumstance is held invalid for any reason, the remaining portion of this act, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force and application.

Section 9. 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 Rules

BILL:	SB 7000
INTRODUCER:	Children, Families, and Elder Affairs Committee
SUBJECT:	Reporting Abuse, Abandonment, and Neglect
DATE:	February 17, 2020 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Preston	Hendon		**CF Submitted as Committee Bill**
1.	Bouck	Sikes	ED	**Favorable**
2.	Preston	Phelps	RC	**Favorable**

I. Summary:

SB 7000 amends definitions relating to child-on-child sexual abuse and reorganizes and clarifies provisions and requirements currently in s. 39.201, F.S., relating to reports of child abuse, abandonment, or neglect and the central abuse hotline at the Department of Children and Families. It also adds a requirement that the central abuse hotline keep statistical reports relating to reports of child abuse and sexual abuse that are reported from or occur in specified educational settings and adds new requirements for investigations related to reports of child-on-child sexual abuse that occur in those educational settings.

The bill provides penalties for specified educational providers whose employees knowingly and willingly fail to report suspected or known child abuse, abandonment or neglect to the central abuse hotline and requires at least a one year suspension of the educator certificate of instructional personnel or school administrator who fail to report child abuse.

The bill provides that the State Board of Education may enforce compliance if a school policy for reporting child abuse, abandonment or neglect does not comply with state law and provides that school personnel reporting child abuse to their supervisor does not relieve them of the responsibility to directly report to the hotline.

The bill also creates a new section of the Florida Statutes, relating to reporting animal abuse, to recognize the strong link between child abuse and animal abuse by requiring any person who is required to investigate child abuse, abandonment, or neglect and who knows or has reasonable cause to suspect that abuse, neglect, cruelty, or abandonment of an animal has occurred must report such knowledge or suspicion within 72 hours to his or her supervisor for submission to a local animal control agency. The bill specifies the information that is to be included in a report.

The bill provides penalties for knowingly and willfully failing to report and requires training for child protective investigators and animal control officers.

The bill amends current law related to sexual abuse of animals to update terminology, include activities specifically related to children and activities involving the sexual abuse of animals and increase the penalty for violations from a misdemeanor of the first degree to a felony of the third degree. The bill places violations at Level 6 on the Offense Severity Ranking Chart.

The bill has no impact on state revenues or expenditures.

The bill takes effect on July 1, 2020.

II. Present Situation:

Current law requires any person who knows or has reasonable cause to suspect a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare is required to report that suspicion to the Department of Children and Families' (DCF's or department's) central abuse hotline.[1]

In addition, any person who knows, or who has reasonable cause to suspect, that a child is abused by an adult other than a parent, legal custodian, caregiver, or other person responsible for the child's welfare or any person who knows, or has reasonable cause to suspect, that a child is the victim of childhood sexual abuse or the victim of a known or suspected juvenile sexual offender, as defined in this chapter, must report such knowledge or suspicion to the central abuse hotline.[2]

Florida currently does not require any reporting of animal cruelty or neglect.

Penalties for Failing to Report Child Abuse

According to s. 39.205, F.S., a person who fails to report known or suspected child abuse, abandonment, or neglect, or who knowingly and willfully prevents another person from doing so, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.[3]

Likewise, a person who is 18 years of age or older and lives in the same house as a child who is known or suspected to be a victim of child abuse, neglect of a child, or aggravated child abuse, and knowingly and willfully fails to report the child abuse commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, unless the court finds that the person is a victim of domestic violence or that other mitigating circumstances exist.[4]

Postsecondary educational entities including Florida College System institutions, state universities, or nonpublic colleges, universities, or schools, as defined in s. 1000.21 or s. 1005.02, F.S., whose administrators knowingly and willfully, upon receiving information from faculty, staff, or other institution employees, fail to report known or suspected child abuse, abandonment, or neglect committed on the property of the university, college, or school, or

[1] Section 39.201, F.S.
[2] *Id*.
[3] Section 39.205, F.S.
[4] *Id*.

during an event or function sponsored by the university, college, or school, or who knowingly and willfully prevent another person from doing so, are subject to fines of $1 million for each such failure.[5]

Child-on-Child Sexual Abuse

Child-on-child sexual abuse is a specific category of child sexual abuse that has not typically been recognized by the general public. There is a growing concern among parents, educators, and child safety experts related to children who sexually abuse other children. Generally, such scenarios include a child who uses their age, physical strength, or positions of status or authority, to engage another child in sexual activity. Typically, child-on-child sexual abuse includes a wide range of sexual behaviors from noncontact sexual behavior such as making obscene phone calls, exhibitionism, voyeurism, and the showing or taking of lewd photographs to varying degrees of direct sexual contact, such as frottage, fondling, digital penetration, rape and various other sexually aggressive acts. Child-on-child sexual abuse does not include normative sexual play or anatomical curiosity and exploration.[6]

This issue is complicated because there is a child who is a victim whose life has often been deeply impacted by the abuse and he or she needs help and healing and there is also a child who is the offender who needs help. Our judicial and mental health systems often treat children with illegal or problematic sexual behaviors as adults. Depending upon local, state, and federal laws, children involved in this form of abuse may be considered a child with sexual behavior problems in need of child welfare services, may be legally defined as juvenile sex offenders or molesters, and/or may be permanently placed on a sex offender registry for involvement in such abuse.[7]

There are many social stigmas and misunderstandings that these children are "monsters" who are destined to act out again. These issues and more make it difficult to report these cases of abuse and to get help for all involved. Nonetheless, it has been repeatedly documented through robust empirical evidence that children with sexual behavior problems and juvenile sex offenders have relatively low future sex offending rates. While these findings may seem counterintuitive when compared to adult sex offenders who report childhood onset of their sexual aggression, recent longitudinal studies suggest that childhood sexual behavioral problems and even juvenile sex offending does not significantly predispose one to engage in adult sex offenses.[8]

Research on the effectiveness of treatment interventions for juvenile sex offenders and children with sexual behavior problems has demonstrated positive outcomes for treatment approaches based upon cognitive-behavioral therapy. While sexual re-offense rates are relatively low for children with sexual behavior problems and juvenile sex offenders, studies have documented program success in reducing recidivism among this population. Other research has indicated that

[5] Section 39.205, F.S.
[6] National Center on Sexual Exploitation, https://endsexualexploitation.org/cochsb/ (last visited October 3, 2019).
[7] Florida Department of Children and Families, *Child-on-Child Needs Assessment – White Paper*(February 2010), *available at*: http://thejrc.com/docs/Child%20on%20Child%20Sexual%20Abuse%20Needs%20Assessment%20-%20White%20Paper.pdf.
[8] *Id*. Each district school board charter school, and private school that accepts scholarship students who participate in a state scholarship program must post in a prominent place in each school policies relating to reporting actual or suspected cases of child abuse, abandonment, or neglect. Section 1006.061, F.S.

program effectiveness is dependent in part on the type of intervention and type of sexual behavior problems. What has been noted in the research is that juvenile sex offenders are more likely than adults to respond positively to treatment and that they are also less likely to recidivate than adults.[9]

In 2009, former DCF Secretary George Sheldon established the Gabriel Myers Work Group to examine the case of Gabriel Myers, a 7-year-old who, on April 16, 2009, was found hanging in the home of his foster parents in Margate, Florida. The second of two reports prepared by the work group, focused on the issue of child-on-child sexual abuse and identified 107 findings and 84 recommendations relating to the issue of child-on-child sexual abuse, including a number related to labeling sexual behaviors[10] It is unknown how many of these recommendations have been implemented.

Current law frequently causes labeling of children as sex offenders or predators. These labels cause stigma that adversely affects children in whatever setting they are in. The label follows them through their child welfare existence and may continue into adulthood. Treatment programs are often labeled "sex offender programs." This is not conducive to positive treatment outcomes. The state's child welfare system may need to change its language to encourage prevention and research-based treatment. Research clearly shows that children seldom reoffend as adults. The system should encourage supportive treatment experiences.[11]

The 1995 enactment of legislation that criminalized sexual behavior problems and labeled some children as juvenile sex offenders further complicated the ability to treat effectively children with sexual behavior problems and to protect other children from child on child sexual abuse. This terminology should be avoided unless criminally proven and the child is assessed and a professional determination is made that the child poses a risk to society. Research has proven that the significant majority of children with sexual behavior problems do not become adult sex offenders or predators; those who receive proper and timely assessment and treatment have an even lower risk of future sexual behavior problems.[12]

While current law requires the hotline to collect and analyze child-on-child sexual abuse reports and include the information in aggregate statistical reports, no current data has been received from the department relating to child-on-child sexual abuse cases. The Gabriel Myers Work Group reported that in FY 2008-09, 8,321 children were identified as being either alleged perpetrators or victims of child on child sexual abuse by the department and approximately 700

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[9] Florida Department of Children and Families, *Child-on-Child Needs Assessment – White Paper* (February 2010), *available at*: http://thejrc.com/docs/Child%20on%20Child%20Sexual%20Abuse%20Needs%20Assessment%20-%20White%20Paper.pdf.

[10] Florida Department of Children and Families, *Report of Gabriel Myers Work Group on Child-on-Child Sexual Abuse* (May 14, 2010), *available at*: https://www.myflfamilies.com/initiatives/GMWorkgroup/docs/Gabriel%20Myers%20COC%20Report%20May%2014%202010.pdf.

[11] *Id*.

[12] Juvenile Sexual Offenders and Their Victims: *Final Report Task Force on Juvenile Sexual Offenders And Their Victims* (January 18, 2006), *available at:* http://centerforchildwelfare.fmhi.usf.edu/kb/bppub/JuvSexOffenderTaskForceReport.pdf. See Appendix ll 1995 Task Force on Juvenile Sex Offenders and Victims of Juvenile Sex Offense and Crimes.

youths were found to be verified victims of child on child sexual abuse by DCF in fiscal year 2007.[13]

Florida law currently requires child-on-child sexual abuse to be reported to the central abuse hotline.[14]

Sexual Abuse of Children in Schools

The reporting of sexual assault and harassment on college campuses has received a great deal of attention in the media, and prompted calls to action from students, legislators, and advocates around the country. This attention is prompting important questions about what school administrators are doing, and what they should be doing, to prevent and address sexual harassment at the elementary and secondary school level, before students get to college. Title IX of the Education Amendments of 1972 (Title IX) has long recognized sexual harassment of students – whether by their peers or by school employees – as a form of prohibited sex discrimination. Despite this legal prohibition, which applies at all schools and educational programs that receive federal funding, harassment based on sex is still a common and harmful phenomenon in K-12 schools, and it has a particularly negative impact on girls.[15]

Recently, reviewing state education records and federal crime data, which allows for a more thorough analysis than state education records, a yearlong investigation by the Associated Press (AP) uncovered roughly 17,000 official reports of sexual assaults by students over a four-year period, from fall 2011 to spring 2015. Though that figure represents the most complete record yet of sexual assaults among the nation's 50 million K-12 students, it does not completely represent the problem because such attacks are greatly under-reported, some states don't track them and those that do vary widely in how they classify and catalog sexual violence. There are academic estimates that range sharply higher.[16]

Elementary and secondary schools have no national requirement to track or disclose sexual violence, and they feel tremendous pressure to hide it. Even under varying state laws, acknowledging an incident can trigger liabilities and requirements to act. When schools don't act children are harmed and justice is not served. Children remain most vulnerable to sexual assaults by other children in the privacy of a home, but schools where many more adults are keeping watch, and where parents trust their kids will be kept safe are the number two site where children are sexually assaulted by their peers.[17]

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[13] Florida Department of Children and Families, *Report of Gabriel Myers Work Group on Child-on-Child Sexual Abuse (*May 14, 2010), *available at:* https://www.myflfamilies.com/initiatives/GMWorkgroup/docs/Gabriel%20Myers%20COC%20Report%20May%2014%202010.pdf.

[14] Section 39.201, F.S.

[15] Equal Rights Advocates, Ending Harassment Now: Keeping our Kids Safe at Schools, 2017, *available at:* https://cdn.atixa.org/website-media/atixa.org/wp-content/uploads/2015/12/12193459/Ending-Harrasment-Now-Keeping-Our-Kids-Safe-At-School.pdf.

[16] The Associated Press, *Hidden horror of school sexual assaults revealed by AP*, May 23, 2017, https://www.apnews.com/afs:Content:965140127 (Last visited October 10, 2019).

[17] *Id*. Instructional personnel or administrative personnel must report a sexual battery committed by a student upon another student to a law enforcement agency having jurisdiction over the school or over the place where the sexual battery occurred if not on the grounds of the school. Section 1012.799, F.S.

Ranging from rape and sodomy to forced oral sex and fondling, the sexual violence that the AP tracked often was mischaracterized as bullying, hazing or consensual behavior. It occurred anywhere students were left unsupervised: buses and bathrooms, hallways and locker rooms. No type of school was immune, whether it be in an upper-class suburb, an inner-city neighborhood or a blue-collar farm town. The AP investigation also found:

- Unwanted fondling was the most common form of assault, but about one in five of the students assaulted were raped, sodomized or penetrated with an object, according to AP's analysis of the federal incident-based crime data.
- About 5 percent of the sexual violence involved 5 and 6 year-olds. But the numbers increased significantly between ages 10 and 11 about the time many students start their middle-school years and continued rising up until age 14. They then dropped as students progressed through their high school years.
- Contrary to public perception, data showed that student sexual assaults by peers were far more common than those by teachers. For every adult-on-child sexual attack reported on school property, there were seven assaults by students.
- Laws and legal hurdles also favor silence. Schools have broadly interpreted rules protecting student and juvenile privacy to withhold basic information about sexual attacks from their communities. Victims and their families face high legal thresholds to successfully sue school districts for not maintaining safe learning environments.

Schools frequently were unwilling or ill-equipped to address the problems the AP found, despite having long been warned by the U.S. Supreme Court[18] that they could be liable for monetary damages.

In October 2010 the U.S. Education Department (USDOE) reminded public school districts that Title IX obligates them to act on bullying and sexual violence. The USDOE specifically referenced anti-gay slurs, sexual remarks, physical harm and unwanted touching.[19] School districts have had to report all sorts of data about students, from those who received free lunches to those who brought in firearms. But there is no federal mandate to track sexual violence. By contrast, colleges and universities must keep a public crime log, send emergency alerts about sexual assaults, train staff and aid victims under a federal law named for a student who was raped and murdered in 1986.[20] Whether and how school sexual violence is tracked is determined by individual states the AP found, with wide variations in whether that information is verified or any training on student-on-student sexual assault is required.

Because experiences that girls have in school are crucial to their overall well-being, recent reports released by the Delores Barr Weaver Policy Center examined the experiences of girls in middle and high school in Florida communities statewide on a variety of well-being indicators. The report examined educational attainment and disparities and girls' overall well-being in relation to school connectedness, safety, access to safe adults including parents and teachers, freedom from violence and victimization in their homes, schools and communities, and

[18] *Davis v. Monroe County Bd. Of Educ*., 526 U.S. 629, (1999).
[19] U.S. Department of Education, Office of Civil Rights, *Guidance on Schools' Obligations to Protect Students from Student-on-Student Harassment on the Basis of Sex; Race, Color and National Origin; and Disability (*October 26, 2010), *available at:* https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf.
[20] Public Law No: 99-654, 100 STAT. 3660.

emotional well-being.[21] National and state data were analyzed for the studies including those from the Department of Children and Families, the Department of Juvenile Justice, the Department of Education and survey data[22] of 27,000 girls in middle and high schools collected by the Department of Health. The data revealed that:

- 33 percent of girls in middle or high schools do not feel safe in school;
- 63 percent of girls in highs school reported being verbally bullied, 30 percent have experienced physical bullying, and 35 percent have experienced cyberbullying; the rates are higher for girls in middle schools; and
- 25 percent of girls reported they have no teacher they can speak to one-on-one about problems.[23]

Link Between Child Abuse and Animal Abuse

Since the 1970s agencies such as the Federal Bureau of Investigation (FBI or Bureau) and the Humane Society of the United States have conducted research on the connection between animal abuse and later violence towards humans, finding a strong correlation. Research indicates:

Young people who are cruel to animals are more likely to become aggressive toward humans as they develop.

- Violent, imprisoned offenders have usually abused animals during their childhood.
- Children learn cruel behaviors from adults and may reenact them on animals.
  Children may abuse animals to release the aggression they feel toward abusive adults or because of psychological trauma

Animal abuse, cruelty and neglect are often considered isolated incidents completely separated from other forms of family violence. Today, however, professionals involved with victims of family violence are not surprised when they learn that often these acts are linked, and that various agencies are working with the same families. The intentional harming or killing of pets by adults or children is now recognized as an sentinel indicator of violence in the home and often the first sign of other family and community violence. Intentional abuse in any form should be taken seriously. Knowing that there is a "link," agencies involved in preventing family violence are increasingly beginning to work together for a more effective, species-spanning response.[24]

It is reported by advocacy groups to be essential that all those who seek to identify and reduce such violence be alert to this connection. Likewise, it is deemed important for professionals in domestic violence intervention, law-enforcement, child protection, human and veterinary medicine, education and animal care and control get to know their counterparts in other professions and work together to establish strategies for a coordinated response to these needs.

Statistics support the efficacy of mandatory cross-reporting.

- Animal abusers are five times as likely to harm humans.

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[21] Delores Barr Weaver Policy Center, *Status of Florida Girls Report (*September 2019), *available at:* https://www.seethegirl.org/wp-content/uploads/2019/09/Full-Report-WellBeing.pdf.

[22] Survey data does not represent all middle and high school students in Florida. Private, alternative, vocational and special education schools are excluded from the sample.

[23] Delores Barr Weaver Policy Center, *Status of Florida Girls Report* (September 2019), *available at*: https://www.seethegirl.org/wp-content/uploads/2019/09/Full-Report-WellBeing.pdf.

[24] National Link Coalition, *What is the Link*? http://nationallinkcoalition.org/what-is-the-link (last visited October 14, 2019).

- In 88 percent of the families of children referred for services because a child had been abused, at least one person had abused pets.
- In approximately two-thirds of those families, it was the abusive parent who had injured or killed a pet. In the remaining one-third, it was a child who abused the pet.
- Seventy percent of people charged with cruelty to animals were known by police for other violent behavior — including homicide.
- Sixty percent of the homes where child abuse or neglect occurred had abused animals.
- Seventy-one percent of abused women said their partners harmed, killed or threatened pets.
- Twelve independent surveys found that between 18 and 48 percent) of battered women delayed their decision to leave, or returned to their abusers out of fear for the welfare of their animals.
- Children exposed to domestic violence were three times more likely to be cruel to animals. In addition, 26.8 percent of boys and 29.4 percent of girls who were victims of physical and sexual abuse and domestic violence have been reported to abuse the family pets, and 75 percent of the incidents of animal abuse occurred in the presence of children to psychologically control and coerce them.[25]

School Specific Violence and Animal Abuse

While some researchers disagree,[26] the National School Safety Council, the USDOE, the American Psychological Association and the National Crime Prevention Council agree that animal cruelty is a warning sign for at-risk youth. A number of studies have drawn links between the abuse of animals and violent incidents in schools. A 2001-2004 study by the Chicago Police Department discovered that in seven school shootings that took place across the country between 1997 and 2001, all involved boys had previously committed acts of animal cruelty.[27]

Florida and Other States

Fifteen states now have cross-reporting laws[28] where officials investigating child abuse must report animal abuse and officials investigating animal abuse must report child abuse. The increasing availability of orders of protection is widely viewed as an acknowledgement of the link and a step in the right direction.[29] Twenty-four states, the District of Columbia, and the territory of Puerto Rico have statutes granting courts the power to enter orders of protection protecting against child abuse and domestic violence by protecting pets. The New York Family

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[25] Devereaux, M.J., *Mandatory Cross-Reporting of Animal and Child Abuse Protects Domestic Violence Victims and Animals (*June 17, 2014), *available at*: http://devlegal.com/page/mandatory-cross-reporting-of-animal-and-child-abuse-protects-domestic-violence-victims-and-animals/.
[26] Psychology Today, *Animal Cruelty Does Not Predict Who Will Be A School Shooter (*February 21, 2018). https://www.psychologytoday.com/us/blog/animals-and-us/201802/animal-cruelty-does-not-predict-who-will-be-school-shooter (last visited March 20, 2019).
[27] The Humane Society of the United States *Animal cruelty and human violence FAQ*, https://www.humanesociety.org/resources/animal-cruelty-and-human-violence-faq (last visited March 21, 2019).
[28] Those states are California, Colorado, Connecticut, District of Columbia, Illinois, Kentucky, Louisiana, Maine, Massachusetts, Nebraska, Ohio, Oregon, Tennessee, Virginia and West Virginia. Devereaux, M.J., *Mandatory Cross-Reporting of Animal and Child Abuse Protects Domestic Violence Victims and Animals*. June 17, 2014, Available at: http://devlegal.com/page/mandatory-cross-reporting-of-animal-and-child-abuse-protects-domestic-violence-victims-and-animals/ (last visited October 11, 2019).
[29] *Id*.

Court Act, for example, allows an order of protection "to refrain from intentionally injuring or killing, without justification, any companion animal the respondent knows to be owned, possessed, leased, kept or held by the petitioner or a minor child residing in the household."

At least 28 states have counseling provisions in their animal cruelty laws. Four of these states require psychological counseling for anyone convicted of animal cruelty and six mandate counseling for juveniles convicted of animal cruelty.[30]

The FBI and Federal Tracking

On January 1, 2016, the FBI's National Incident-Based Reporting System (NIBRS) began collecting detailed data from participating law enforcement agencies on acts of animal cruelty, including gross neglect, torture, organized abuse, and sexual abuse. Before this year, crimes that involved animals were lumped into an "All Other Offenses" category in the FBI's Uniform Crime Reporting (UCR) Program's annual Crime in the United States report, a survey of crime data provided by about 18,000 city, county, state, tribal, and federal law enforcement agencies. Acts of cruelty against animals are now counted alongside felony crimes like arson, burglary, assault, and homicide in the FBI's expansive criminal database.[31]

The National Sheriffs' Association was a leading advocate for adding animal cruelty as a data set in the Bureau's collection of crime statistics. The association for years has cited studies linking animal abuse and other types of crimes—most famously, murders committed by serial killers like Ted Bundy, Jeffrey Dahmer, and the "Son of Sam" killer David Berkowitz. The organization also points out the overlap animal abuse has with domestic violence and child abuse. John Thompson, deputy executive director of the National Sheriffs' Association stated that "If somebody is harming an animal, there is a good chance they also are hurting a human. If we see patterns of animal abuse, the odds are that something else is going on."[32]

A first look at NIBRS animal cruelty statistics will be available next year, but it will take at least three to five years for the data to begin showing helpful patterns. Groups that advocated for the new animal cruelty data hope that by adding it to NIBRS, rather than the summary-based statistics agencies provide the Bureau each year, they will get a much richer data set from which to mine. That's because NIBRS requires participating agencies to not only report crimes but also all the circumstances of a crime. Additionally, the Bureau plans to phase out summary-based UCR statistics—which have been collected roughly the same way since 1930—in favor of NIBRS by 2021.[33]

[30] The Humane Society of the United States. *Available at*: https://www.humanesociety.org/resources/animal-cruelty-and-human-violence-faq (last visited October 11, 2019).
[31] Federal Bureau of Investigation. Tracking Animal Crimes, February 1, 2016, *Available at*: https://www.fbi.gov/news/stories/-tracking-animal-cruelty (Last visited October 14, 2019).
[32] Sheltering Animals Of Abuse Victims, http://www.saavprogram.org/blog/2018/3/8/t49dzj8ci62m7cera4bc5enfoe8ct7 (last visited October 11, 2019).
[33] Federal Bureau of Investigation. *Tracking Animal Crimes*, February 1, 2016, https://www.fbi.gov/news/stories/-tracking-animal-cruelty (last visited October 14, 2019).

Sexual Abuse of Animals

Animal sexual abuse is the sexual molestation of an animal by a human. It can also include the killing or injuring of an animal for sexual gratification. Studies have shown that bestiality is strongly related to child sexual abuse or pedophilia. In fact, bestiality is the single largest predictor of future risk to molest a child. In a recent study of about 500 bestiality-related arrests in the U.S., more than a third of the incidents involved not only the sexual abuse of an animal, but of a child or adult. Children under the age of 12 were frequently solicited or manipulated into having sex with a family pet or forced to watch a parent or other guardian do so. Many of them were shown animal pornography as a way of grooming them to perform sexual acts.[34]

Laws related to animal sexual abuse as a form of cruelty are typically more specialized than animal cruelty laws in general. There is wide variability in how bestiality laws are written and enforced across the U.S., and not every state has one. Although attitudes are changing, animals have traditionally been thought of as property, and in sixteen U.S. states, laws prohibiting bestiality are housed in the animal cruelty codes. In the remaining states with laws, bestiality is considered a sexual assault or a crime against public morals. In 23 states, a violation of the law is a misdemeanor with penalties ranging from 30 days to 18 months. In the remaining states bestiality is a felony with penalties ranging from 5 months to 20 years. More problematic than how bestiality laws are codified is the definition of what bestiality entails. A law that is too general or too specific can result in loopholes that affect the kind of charges that can be laid or successfully prosecuted.[35]

Current law in Florida includes provisions related to animal sexual abuse and violators commit a misdemeanor of the first degree.[36]

III. Effect of Proposed Changes:

Section 1 amends s. 39.01, F.S., relating to definitions, to delete the definition of the terms "juvenile sexual abuse" and "child who has exhibited inappropriate sexual behavior" and create a definition for the term "child-on-child sexual abuse."

Section 2 creates s. 39.101, F.S., relating to the central abuse hotline, to reorganize and clarify provisions currently in s. 39.201, F.S., that are specific to the operation of the central abuse hotline. It also adds a requirement that the Department of Children and Families (department) collect and analyze, in separate statistical reports, reports of child abuse and sexual abuse which are reported from or which occurred on school premises; on school transportation; at school-sponsored off-campus events; at any school readiness program provider determined to be eligible under s. 1002.88, F.S.; at a private prekindergarten provider or a public school prekindergarten provider, as those terms are defined in s. 1002.51, F.S.; at a public K-12 school as described in s. 1000.04, F.S; or at a home education program or a private school, as those terms are defined in s. 1002.01, F.S. Those reports are already required for reports from a Florida College System

[34] National Sheriff's Association, Sheriff's and Deputy Magazine, *The Law Enforcement Guide: What You Should Know About Bestiality, 2019 Special Edition, available at:* https://www.sheriffs.org/sites/default/files/2019_SD_AA.pdf.
[35] *Id.*
[36] Section 828.126, F.S.

institution or a state university, as those terms are defined in s. 1000.21, F.S; or at any school, as defined in s. 1005.02, F.S.

Section 3 amends s. 39.201, F.S., relating to mandatory reporting of child abuse, abandonment or neglect, to reorganize and clarify provisions currently in s. 39.201, F.S., that are specific to the child abuse, abandonment, or neglect mandatory reporting process. New requirements include a provision for the department to investigate reports of child-on-child sexual abuse that occur in specified educational settings; and that an animal control officer as defined in s. 828.27, F.S.; or agent appointed under s. 828.03, F.S.; is required to provide his or her name to the hotline when making a report.

Section 4 amends s. 39.205, F.S., relating to penalties for reporting of child abuse, abandonment or neglect, to provide penalties for educational institutions that fail to report child abuse, abandonment or neglect as follows:

- Any school readiness program provider determined to be eligible under s. 1002.88, F.S.; private prekindergarten provider or public school prekindergarten provider, as those terms are defined in s. 1002.51, F.S.; public K-12 school as described in s. 1000.04, F.S.; home education program as defined in s. 1002.01, F.S.; or private school as defined in s. 1002.01, F.S., that accepts scholarship students who participate in a state scholarship program under chapter 1002, F.S.; whose employees knowingly and willingly fail to report known or suspected child abuse, abandonment, or neglect to the central abuse hotline pursuant to this chapter, is subject to a penalty for each such failure.
    - An early learning coalition may suspend or terminate a provider from participating in the school readiness program or Voluntary Prekindergarten Education Program if an employee of the provider fails to report known or suspected child abuse, abandonment, or neglect.
    - If the State Board of Education (state board) determines that policies of the district school board regarding reporting known or suspected child abuse, abandonment, or neglect by school employees do not comply with statute or state board rule, the state board may enforce compliance pursuant to s. 1008.32, F.S.
    - The Department of Education may prohibit a private school whose employees fail to report known or suspected child abuse, abandonment, or neglect from enrolling new students in a state scholarship program under chapter 1002 for 1 fiscal year. If employees at a private school knew of, should have known of, or suspected child abuse, abandonment, or neglect in two or more instances, the Commissioner of Education may determine that the private school is ineligible to participate in scholarship programs.

The bill also provides that school personnel reporting child abuse to their supervisor does not relieve them of the responsibility to directly report to the hotline.

Section 5 creates s. 39.208, F.S., relating to reporting of child and animal abuse, to recognize the importance of the strong link between child abuse and animal abuse and cruelty by requiring any person who is required to investigate child abuse, abandonment, or neglect and who knows or has reasonable cause to suspect that abuse, neglect, cruelty, or abandonment of an animal has occurred must report such knowledge or suspicion within 72 hours to his or her supervisor for submission to a local animal control agency. The bill specifies the information that is to be

included in a report. The bill provides for penalties for knowingly and willfully failing to report and requires training for child protective investigators and animal control officers.

Section 6 amends s. 39.302, F.S., relating to institutional investigations of child abuse, abandonment and neglect, to provide that in an institutional investigation, the alleged perpetrator may be represented by an attorney, at his or her own expense, or may be accompanied by another person, if the attorney or the person executes an affidavit of understanding with the department and agrees to comply with the confidentiality requirements under s. 39.202, F.S., This provision is currently in s. 39.201, F.S., and is being relocated to the more appropriate section.

Section 7 amends s. 828.126, F.S., relating to sexual activities involving animals, to update terminology, include activities specifically related to children and activities involving the sexual abuse of animals and increase the penalty for violations from a misdemeanor of the first degree to a felony of the third degree. The bill places violations at Level 6 on the Offense Severity Ranking Chart.

Section 8 amends s. 828.27, F.S., relating to local animal control or cruelty ordinances, to require county and municipally employed animal control officers to complete a 1-hour training course developed by the department and the Florida Animal Control Association on how to recognize and report child abuse, abandonment and neglect.

Section 9 amends s. 921.0022, F.S., relating to the criminal punishment code and the offense severity ranking chart, to add violations of s. 828.126, F.S., relating to sexual activities with animals, to Level 6 of the Offense Severity Ranking Chart.

Section 10 amends s. 1006.061, F.S., relating to child abuse abandonment and neglect policy in schools, to clarify that child-on-child sexual abuse must also be included in school policies and on posters required to be posted in every school setting. Requires those posters to be updated in collaboration with the department.

Section 11 amends s. 1012.795, F.S., relating to the Education Practices Commission and the authority to discipline, to require at least a one year suspension of the educator certificate of instructional personnel or school administrator who knowingly fails to report child abuse.

Section 12 amends s. 39.307, F.S., relating to reports of child-on-child sexual abuse, to conform to changes made by this act.

Section 13 amends s. 39.202, F.S., relating to confidentiality of reports and records in cases of child abuse or neglect, to conform a reference to changes made by this act.

Section 14 amends s. 39.301, F.S., relating to the initiation of protective investigations, to conform a reference to changes made by this act.

Section 15 amends s. 39.521, F.S., relating to disposition hearings and powers of disposition, to conform a reference to changes made by this act.

Section 16 amends s. 39.6012, F.S., relating to case plan tasks and services, to conform a reference to changes made by this act.

Section 17 amends s. 322.09, F.S., relating to the responsibility for negligence or misconduct of a minor, to conform a reference to changes made by this act.

Section 18 amends s. 394.495, F.S., relating to child and adolescent mental health system of care, to conform a reference to changes made by this act.

Section 19 amends s. 627.746, F.S., relating to coverage for minors who have a learner's driver license, to conform a reference to changes made by this act.

Section 20 amends s. 934.03, F.S., relating to interception and disclosure of wire, oral, or electronic communications prohibitions, to conform a reference to changes made by this act.

Section 21 amends s. 934.255, F. S., relating to subpoenas in investigations of sexual offenses, to conform a reference to changes made by this act.

Section 22 amends s. 960.065, F.S., relating to eligibility for awards, to conform a reference to changes made by this act.

Section 23 provides an effective date of July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill has not been reviewed by the Criminal Justice Estimating Conference to determine the impact on the state's prison population. Animal abuse is a low volume offense and is not expected to have a fiscal impact on the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.01, 39.201, 39.205, 39.302, 828.126, 828.27, 921.0022, 1006.061, 1012.795, 39.307, 39.202, 39.301, 39.521, 39.6012, 322.09, 394.495, 627.746, 934.03, 934.255, and 960.065.
This bill creates the following sections of the Florida Statutes: 39.101 and 39.208.

IX. Additional Information:

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

None.

B. Amendments:

None.

By the Committee on Children, Families, and Elder Affairs

586-00997-20 20207000__

A bill to be entitled

An act relating to reporting abuse, abandonment, and neglect; amending s. 39.01, F.S.; deleting the terms "juvenile sexual abuse" and "child who has exhibited inappropriate sexual behavior"; defining the term "child-on-child sexual abuse"; conforming cross-references; creating s. 39.101, F.S.; relocating existing provisions relating to the central abuse hotline of the Department of Children and Families; providing additional requirements relating to the hotline; amending s. 39.201, F.S.; revising when a person is required to report to the central abuse hotline; requiring the department to conduct a child protective investigation under certain circumstances; requiring the department to notify certain persons and agencies when certain child protection investigations are initiated; providing requirements relating to such investigations; requiring animal control officers and certain agents to provide their names to hotline staff; requiring central abuse hotline counselors to advise reporters of certain information; requiring that counselors receive specified periodic training; revising requirements relating to reports of abuse involving impregnation of children; amending s. 39.205, F.S.; providing penalties for the failure to report known or suspected child abuse, abandonment, or neglect; providing construction; specifying that certain persons are not relieved from the duty to report by notifying a supervisor; creating s. 39.208,

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F.S.; providing legislative findings and intent; providing responsibilities for child protective investigators relating to animal abuse and neglect; providing criminal, civil, and administrative immunity to certain persons; providing responsibilities for animal control officers relating to child abuse, abandonment, and neglect; providing criminal penalties; requiring the department to develop certain training in consultation with the Florida Animal Control Association which relates to child and animal abuse, abandonment, and neglect; requiring the department to adopt rules; amending s. 39.302, F.S.; conforming cross-references; authorizing certain persons to be represented by an attorney during institutional investigations and under certain circumstances; providing requirements relating to institutional investigations; amending s. 828.126, F.S.; providing a purpose; revising the definition of the term "sexual contact"; revising prohibitions relating to sexual conduct and sexual contact with an animal; revising criminal penalties; requiring a court to issue certain orders; amending s. 828.27, F.S.; requiring certain animal control officers to complete specified training; providing requirements for the training; amending s. 921.0022, F.S.; assigning offense severity rankings for sexual activities involving animals; amending s. 1006.061, F.S.; conforming provisions to changes made by the act; requiring the Department of Education to coordinate

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with the Department of Children and Families to develop, update, and publish certain notices; amending s. 1012.795, F.S.; requiring the Education Practices Commission to suspend the educator certificate of certain personnel and administrators for failing to report known or suspected child abuse; amending s. 39.307, F.S.; conforming provisions to changes made by the act; amending ss. 39.202, 39.301, 39.521, 39.6012, 322.09, 394.495, 627.746, 934.03, 934.255, and 960.065, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Present subsections (8) through (12) and (15) through (87) of section 39.01, Florida Statutes, are redesignated as subsections (7) through (11) and (14) through (86), respectively, a new subsection (12) is added to that section, and present subsections (7), (10), (14), and (37) of that section are amended, to read:

39.01 Definitions.—When used in this chapter, unless the context otherwise requires:

~~(7) "Juvenile sexual abuse" means any sexual behavior by a child which occurs without consent, without equality, or as a result of coercion. For purposes of this subsection, the following definitions apply:~~

~~(a) "Coercion" means the exploitation of authority or the use of bribes, threats of force, or intimidation to gain cooperation or compliance.~~

~~(b) "Equality" means two participants operating with the same level of power in a relationship, neither being controlled nor coerced by the other.~~

~~(c) "Consent" means an agreement, including all of the following:~~

~~1. Understanding what is proposed based on age, maturity, developmental level, functioning, and experience.~~

~~2. Knowledge of societal standards for what is being proposed.~~

~~3. Awareness of potential consequences and alternatives.~~

~~4. Assumption that agreement or disagreement will be accepted equally.~~

~~5. Voluntary decision.~~

~~6. Mental competence.~~

~~Juvenile sexual behavior ranges from noncontact sexual behavior such as making obscene phone calls, exhibitionism, voyeurism, and the showing or taking of lewd photographs to varying degrees of direct sexual contact, such as frottage, fondling, digital penetration, rape, fellatio, sodomy, and various other sexually aggressive acts.~~

(9)~~(10)~~ "Caregiver" means the parent, legal custodian, permanent guardian, adult household member, or other person responsible for a child's welfare as defined in subsection (53)~~(54)~~.

(12)(a) "Child-on-child sexual abuse" means inappropriate sexual activity or behavior between children and without the direct involvement of an adult which:

1. Is overt and deliberate;

2. Is directed at sexual stimulation; and

3.a. Occurs without consent or without equality mentally, physically, or in age; or

b. Occurs as a result of physical or emotional coercion.

(b) For purposes of this subsection, the following definitions apply:

1. "Coercion" means the exploitation of authority or the use of bribes, threats of force, or intimidation to gain cooperation or compliance.

2. "Consent" means an agreement including all of the following:

a. Understanding of what is proposed which is based on age, maturity, and developmental level.

b. Knowledge of societal standards for what is being proposed.

c. Awareness of the potential consequences.

d. Assumption that participation or nonparticipation will be accepted equally.

e. Voluntariness of decisions made.

f. Mental competence.

3. "Equality" means two participants operating with the same level of power in a relationship, without one being controlled or coerced by the other.

The term includes both noncontact sexual behavior, such as making obscene phone calls, exhibitionism, voyeurism, and the showing or taking of lewd photographs, and direct sexual contact, such as frottage, fondling, digital penetration, rape, fellatio, sodomy, and various other sexually aggressive acts.

Child-on-child sexual abuse does not include normative sexual play or anatomical curiosity and exploration.

~~(14) "Child who has exhibited inappropriate sexual behavior" means a child who has been found by the department or the court to have committed an inappropriate sexual act.~~

(36)~~(37)~~ "Institutional child abuse or neglect" means situations of known or suspected child abuse or neglect in which the person allegedly perpetrating the child abuse or neglect is an employee of a public or private school, public or private day care center, residential home, institution, facility, or agency or any other person at such institution responsible for the child's welfare as defined in subsection (53) ~~(54)~~.

Section 2. Section 39.101, Florida Statutes, is created to read:

39.101 Central abuse hotline.—The central abuse hotline is the first step in the safety assessment and investigation process.

(1) ESTABLISHMENT AND OPERATION.—The department shall establish and maintain a central abuse hotline capable of receiving, 24 hours a day, 7 days a week, all reports of known or suspected child abuse, abandonment, or neglect and reports that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care when such reports are made pursuant to s. 39.201. Reports may be made in writing, through a single statewide toll-free telephone number, or through electronic reporting. Any person may use any of these methods to make a report at any hour of the day or night, on any day of the week.

(a) If it appears that the immediate safety or well-being of a child is endangered, that the family may flee or the child will be unavailable for purposes of conducting a child protective investigation, or that the facts otherwise so warrant, the department must commence an investigation immediately, regardless of the time of day or night.

(b) In all other child abuse, abandonment, or neglect cases, a child protective investigation must be commenced within 24 hours after receipt of the report.

(2) GENERAL REQUIREMENTS.—The central abuse hotline must be operated in such a manner as to enable the department to:

(a) Accept reports for investigation when there is a reasonable cause to suspect that a child has been or is being abused or neglected or has been abandoned.

(b) Determine whether the allegations made by the reporter require an immediate or a 24-hour response priority.

(c) Immediately identify and locate prior reports or cases of child abuse, abandonment, or neglect through the use of the department's automated tracking system.

(d) Track critical steps in the investigative process to ensure compliance with all requirements for any report of abuse, abandonment, or neglect.

(e) When appropriate, refer calls that do not allege the abuse, neglect, or abandonment of a child to other organizations that may better resolve the reporter's concerns.

(f) Serve as a resource for the evaluation, management, and planning of preventive and remedial services for children who have been subject to abuse, abandonment, or neglect.

(g) Initiate and enter into agreements with other states

for the purposes of gathering and sharing information contained in reports on child maltreatment to further enhance programs for the protection of children.

(h) Promote public awareness of the central abuse hotline through community-based partner organizations and public service campaigns.

(3) COLLECTION OF INFORMATION AND DATA.—The department shall:

(a) Voice-record all incoming or outgoing calls that are received or placed by the central abuse hotline which relate to suspected or known child abuse, neglect, or abandonment. The department shall maintain an electronic copy of each electronic report. The recording or electronic copy of each electronic report must become a part of the record of the report but, notwithstanding s. 39.202, must be released in full only to law enforcement agencies and state attorneys for the purposes of investigating and prosecuting criminal charges pursuant to s. 39.205, or to employees of the department for the purposes of investigating and seeking administrative penalties pursuant to s. 39.206. This paragraph does not prohibit hotline staff from using the recordings or the electronic reports for quality assurance or training.

(b) Secure and install electronic equipment that automatically provides to the hotline the number from which the call or fax is placed or the Internet protocol address from which the report is received. This number shall be entered into the report of abuse, abandonment, or neglect and become a part of the record of the report, but shall enjoy the same confidentiality as provided to the identity of the reporter

pursuant to s. 39.202.

(c)1. Update the web form used for reporting child abuse, abandonment, or neglect to include qualifying questions in order to obtain necessary information required to assess need and a response.

2. The report must be made available to the counselors in its entirety as needed to update the Florida Safe Families Network or other similar systems.

(d) Monitor and evaluate the effectiveness of the reporting and investigating of suspected abuse, abandonment, or neglect of children through the development and analysis of statistical and other information.

(e) Maintain and produce aggregate statistical reports monitoring patterns of child abuse, child abandonment, and child neglect. The department shall collect and analyze child-on-child sexual abuse reports and include such information in the aggregate statistical reports. The department shall collect and analyze, in separate statistical reports, those reports of child abuse and sexual abuse which are reported from or which occurred on school premises; on school transportation; at school-sponsored off-campus events; at any school readiness program provider determined to be eligible under s. 1002.88; at a private prekindergarten provider or a public school prekindergarten provider, as those terms are defined in s. 1002.51; at a public K-12 school as described in s. 1000.04; at a home education program or a private school, as those terms are defined in s. 1002.01; at a Florida College System institution or a state university, as those terms are defined in s. 1000.21; or at any school, as defined in s. 1005.02.

(4) EMPLOYMENT SCREENING.—Information received by the central abuse hotline may not be used for employment screening, except as provided in s. 39.202(2)(a) and (h) or s. 402.302(15).

(a) Information in the central abuse hotline and the department's automated abuse information system may be used by the department, its authorized agents or contract providers, the Department of Health, or county agencies as part of the licensure or registration process pursuant to ss. 402.301-402.319 and ss. 409.175-409.176.

(b) Information in the central abuse hotline may also be used by the Department of Education for purposes of educator certification discipline and review pursuant to s. 39.202(2)(q).

(5) QUALITY ASSURANCE.—On an ongoing basis, the department's quality assurance program shall review screened-out reports involving three or more unaccepted reports on a single child, where jurisdiction applies, in order to detect such things as harassment and situations that warrant an investigation because of the frequency of the reports or the variety of the sources of the reports. A component of the quality assurance program must analyze unaccepted reports to the hotline by identified relatives as a part of the review of screened-out calls. The Assistant Secretary for Child Welfare may refer a case for investigation when it is determined, as a result of such review, that an investigation may be warranted.

Section 3. Section 39.201, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 39.201, F.S., for present text.)

39.201 Required reports of child abuse, abandonment,

neglect, and child-on-child sexual abuse; required reports of death.—

(1) REQUIRED REPORTING.—

(a) *Individuals required to report.*—Any person who knows, or has reasonable cause to suspect, that any of the following has occurred shall report such knowledge or suspicion to the central abuse hotline on the single statewide toll-free telephone number or by electronic report pursuant to s. 39.101:

1. Child abuse, neglect, or abandonment by a parent or caregiver.—A child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare, or that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care.

a. Personnel at the department's central abuse hotline shall determine if the report received meets the statutory definition of child abuse, abandonment, or neglect. Any report meeting one of these definitions must be accepted for protective investigation pursuant to part III of this chapter.

b. Any call received from a parent or legal custodian seeking assistance for himself or herself which does not meet the criteria for being a report of child abuse, abandonment, or neglect may be accepted by the hotline for response to ameliorate a potential future risk of harm to a child.

c. If it is determined by a child welfare professional that a need for community services exists, the department must refer the parent or legal custodian for appropriate voluntary community services.

2. Child abuse by a noncaregiver.—A child is abused by an adult other than a parent, legal custodian, caregiver, or other person responsible for the child's welfare. Such reports must be immediately electronically transferred to the appropriate county sheriff's office by the central abuse hotline.

3. Child-on-child sexual abuse.—A child, including a child who is in the custody of, or under the protective supervision of, the department is the victim of child-on-child sexual abuse.

a. The department shall conduct an assessment, assist the family in receiving appropriate services pursuant to s. 39.307, and send a written report of the allegation to the appropriate county sheriff's office within 48 hours after the initial report is made to the central abuse hotline.

b. The department shall ensure that the facts and results of any investigation of child-on-child sexual abuse involving a child in the custody of, or under the protective supervision of, the department are made known to the court at the next hearing or included in the next report to the court concerning the child.

c. In addition to conducting an assessment and assisting the family in receiving appropriate services, the department shall conduct a child protective investigation of child-on-child sexual abuse that occurs on school premises; on school transportation; at school-sponsored off-campus events; at a public or private school readiness or prekindergarten program; at a public K-12 school; or at a home education program or a private school. Upon receipt of a report that alleges that a student has been the victim of an act of child-on-child sexual abuse perpetrated by another student or students, the department

shall initiate a child protective investigation within the timeframes established under s. 39.101(1) and notify the Department of Education; the law enforcement agency having jurisdiction over the municipality or county in which the school is located; and, as appropriate, the superintendent of the school district where the school is located, the administrative officer of the private school, or the owner of the private school readiness or prekindergarten provider. The protective investigation must include an interview with the child's parent or legal guardian. The department shall make a full written report to the law enforcement agency within 3 working days after making the oral report. Whenever possible, any criminal investigation must be coordinated with the department's child protective investigation. Any interested person who has information regarding such abuse may forward a statement to the department.

(b) *Individuals required to provide their name when reporting.*—While all individuals are required to report, and members of the general public may report anonymously if they choose, reporters in the following occupational categories are required to provide his or her name to the central abuse hotline staff:

1. Physician, osteopathic physician, medical examiner, chiropractic physician, nurse, or hospital personnel engaged in the admission, examination, care, or treatment of persons;

2. Health professional or mental health professional other than ones listed in subparagraph 1.;

3. Practitioner who relies solely on spiritual means for healing;

4. School teacher or other school official or personnel;

5. Social worker, day care center worker, or other professional child care worker, foster care worker, residential worker, or institutional worker;

6. Law enforcement officer;

7. Judge; or

8. Animal control officer as defined in s. 828.27 or agents appointed under s. 828.03.

(c) *Confidentiality of reporter names.*—Central abuse hotline counselors shall advise reporters that, while their names must be entered into the record of the report, the names of reporters are held confidential and exempt as provided in s. 39.202. Counselors must receive periodic training in encouraging all reporters to provide their names when making a report.

(2) ADDITIONAL CIRCUMSTANCES RELATED TO REPORTS.—

(a) *Abuse occurring out of state.*—If a report is of an instance of known or suspected child abuse, abandonment, or neglect which occurred out of state and the alleged perpetrator and the child alleged to be a victim are living out of state, the central abuse hotline may not accept the report or call for investigation unless the child is currently being evaluated in a medical facility in this state.

1. If the child is currently being evaluated in a medical facility in this state, the central abuse hotline shall accept the report or call for investigation and shall transfer the information on the report or call to the appropriate state or country.

2. If the child is not currently being evaluated in a medical facility in this state, the central abuse hotline shall

transfer the information on the report or call to the appropriate state or county.

(b) *Abuse reports received from emergency room physicians.*—The department must initiate an investigation when it receives a report from an emergency room physician.

(c) *Abuse involving impregnation of a child.*—If the report is of an instance of known or suspected child abuse involving impregnation of a child under 16 years of age by a person 21 years of age or older solely under s. 827.04(3), and such person is not a caregiver, the report must be immediately electronically transferred to the appropriate county sheriff's office by the central abuse hotline.

(d) *Institutional child abuse or neglect.*—Reports involving known or suspected institutional child abuse or neglect, as defined in s. 39.01, must be made and received in the same manner as all other reports made pursuant to this section.

(e) *Surrendered newborn infants.*—Reports involving surrendered newborn infants as described in s. 383.50 must be made and received by the department.

1. If the report is of a surrendered newborn infant as described in s. 383.50 and there is no indication of abuse, neglect, or abandonment other than that necessarily entailed in the infant having been left at a hospital, emergency medical services station, or fire station, the department shall provide to the caller the name of a licensed child-placing agency on a rotating basis from a list of licensed child-placing agencies eligible and required to accept physical custody of and to place newborn infants left at a hospital, emergency medical services station, or fire station. The report may not be considered a

report of abuse, neglect, or abandonment solely because the infant has been left at a hospital, emergency medical services station, or fire station pursuant to s. 383.50.

2. If the report includes indications of abuse or neglect beyond that necessarily entailed in the infant having been left at a hospital, emergency medical services station, or fire station, the report must be considered as a report of abuse, neglect, or abandonment and must be subject to the requirements of s. 39.395 and all other relevant provisions of this chapter, notwithstanding chapter 383.

(3) EXCEPTIONS TO REPORTING.—

(a) An additional report of child abuse, abandonment, or neglect does not have to be made by:

1. A professional who is hired by or who enters into a contract with the department for the purpose of treating or counseling any person as a result of a report of child abuse, abandonment, or neglect if such person was the subject of the referral for treatment.

2. An officer or employee of the judicial branch when the child is currently being investigated by the department, when there is an existing dependency case, or when the matter has previously been reported to the department, if there is reasonable cause to believe that the information is already known to the department. This subparagraph applies only when the information has been provided to the officer or employee in the course of carrying out his or her official duties.

3. An officer or employee of a law enforcement agency when the incident under investigation by the law enforcement agency was reported to law enforcement by the central abuse hotline

through the electronic transfer of the report or call. The department's central abuse hotline is not required to electronically transfer calls and reports received pursuant to paragraph (2)(b) to the county sheriff's office if the matter was initially reported to the department by the county sheriff's office or by another law enforcement agency. This subparagraph applies only when the information related to the alleged child abuse has been provided to the officer or employee of a law enforcement agency or central abuse hotline employee in the course of carrying out his or her official duties.

(b) Nothing in this chapter or in the contracting with community-based care providers for foster care and related services as specified in s. 409.987 may be construed to remove or reduce the duty and responsibility of any person, including any employee of the community-based care provider, to report a suspected or actual case of child abuse, abandonment, or neglect or the sexual abuse of a child to the department's central abuse hotline.

(4) MANDATORY REPORTS OF A CHILD DEATH.—Any person required to report or investigate cases of suspected child abuse, abandonment, or neglect who has reasonable cause to suspect that a child died as a result of child abuse, abandonment, or neglect shall report his or her suspicion to the appropriate medical examiner. The medical examiner shall accept the report for investigation and shall report his or her findings, in writing, to the local law enforcement agency, the appropriate state attorney, and the department. Autopsy reports maintained by the medical examiner are not subject to the confidentiality requirements provided for in s. 39.202.

Section 4. Present subsections (3) through (10) of section 39.205, Florida Statutes, are redesignated as subsections (4) through (11), respectively, new subsection (3) and subsection (12) are added to that section, and present subsections (1), (3), (4), and (5) of that section are amended, to read:

39.205 Penalties relating to reporting of child abuse, abandonment, or neglect.—

(1) A person ~~who is required to report known or suspected child abuse, abandonment, or neglect and~~ who knowingly and willfully fails to report known or suspected child abuse, abandonment, or neglect ~~do so~~, or who knowingly and willfully prevents another person from doing so, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A judge subject to discipline pursuant to s. 12, Art. V of the Florida Constitution shall not be subject to criminal prosecution when the information was received in the course of official duties.

(3) Any school readiness program provider determined to be eligible under s. 1002.88; private prekindergarten provider or public school prekindergarten provider, as those terms are defined in s. 1002.51; public K-12 school as described in s. 1000.04; home education program as defined in s. 1002.01; or private school as defined in s. 1002.01; that accepts scholarship students who participate in a state scholarship program under chapter 1002, whose employees knowingly and willingly fail to report known or suspected child abuse, abandonment, or neglect to the central abuse hotline pursuant to this chapter, is subject to a penalty for each such failure.

(a) An early learning coalition may suspend or terminate a

provider from participating in the school readiness program or Voluntary Prekindergarten Education Program if an employee of the provider fails to report known or suspected child abuse, abandonment, or neglect.

(b) If the State Board of Education determines that policies of the district school board regarding reporting known or suspected child abuse, abandonment, or neglect by school employees do not comply with statute or state board rule, the state board may enforce compliance pursuant to s. 1008.32.

(c) The Department of Education may prohibit a private school whose employees fail to report known or suspected child abuse, abandonment, or neglect from enrolling new students in a state scholarship program under chapter 1002 for 1 fiscal year. If employees at a private school knew of, should have known of, or suspected child abuse, abandonment, or neglect in two or more instances, the Commissioner of Education may determine that the private school is ineligible to participate in scholarship programs.

(4) ~~(3)~~ Any Florida College System institution, state university, or nonpublic college, university, or school, as defined in s. 1000.21 or s. 1005.02, whose administrators ~~knowingly and willfully~~, upon receiving information from faculty, staff, or other institution employees, knowingly and willfully fail to report to the central abuse hotline pursuant to this chapter known or suspected child abuse, abandonment, or neglect committed on the property of the university, college, or school, or during an event or function sponsored by the university, college, or school, or who knowingly and willfully prevent another person from doing so, shall be subject to fines

of $1 million for each such failure.

(a) A Florida College System institution subject to a fine shall be assessed by the State Board of Education.

(b) A state university subject to a fine shall be assessed by the Board of Governors.

(c) A nonpublic college, university, or school subject to a fine shall be assessed by the Commission for Independent Education.

(5) ~~(4)~~ Any Florida College System institution, state university, or nonpublic college, university, or school, as defined in s. 1000.21 or s. 1005.02, whose law enforcement agency fails to report to the central abuse hotline pursuant to this chapter known or suspected child abuse, abandonment, or neglect committed on the property of the university, college, or school~~,~~ or during an event or function sponsored by the university, college, or school, shall be subject to fines of $1 million for each such failure, assessed in the same manner as specified in subsection (4) ~~(3)~~.

(5) Any Florida College System institution, state university, or nonpublic college, university, or school, as defined in s. 1000.21 or s. 1005.02, shall have the right to challenge the determination that the institution acted knowingly and willfully under subsection (4) ~~(3)~~ or subsection (5) ~~(4)~~ in an administrative hearing pursuant to s. 120.57; however, if it is found that actual knowledge and information of known or suspected child abuse was in fact received by the institution's administrators and was not reported, a presumption of a knowing and willful act will be established.

(12) This section may not be construed to remove or reduce

the requirement of any person, including any employee of a school readiness program provider determined to be eligible under s. 1002.88; a private prekindergarten provider or a public school prekindergarten provider, as those terms are defined in s. 1002.51; a public K-12 school as described in s. 1000.04; a home education program or a private school, as those terms are defined in s. 1002.01; a Florida College System institution or a state university, as those terms are defined in s. 1000.21; a college as defined in s. 1005.02; or a school as defined in s. 1005.02; to directly report a suspected or actual case of child abuse, abandonment, or neglect or the sexual abuse of a child to the department's central abuse hotline pursuant to this chapter. A person required to report to the central abuse hotline is not relieved of the obligation by notifying his or her supervisor.

Section 5. Section 39.208, Florida Statutes, is created to read:

39.208 Cross-reporting child and animal abuse and neglect.—

(1) LEGISLATIVE FINDINGS AND INTENT.—

(a) The Legislature recognizes that animal abuse of any kind is a type of interpersonal violence and often co-occurs with child abuse and other forms of family violence, including elder abuse and domestic violence. Early identification of animal abuse is another important tool in safeguarding children from abuse and neglect, providing needed support to families, and protecting animals.

(b) The Legislature finds that education and training for child protective investigators and animal care and control personnel should include information on the link between the welfare of animals in the family and child safety and

protection.

(c) Therefore, it is the intent of the Legislature to require reporting and cross-reporting protocols and collaborative training between child protective services and animal control services personnel to help protect the safety and well-being of children, their families, and their animals.

(2) RESPONSIBILITIES OF CHILD PROTECTIVE INVESTIGATORS.—Any person who is required to investigate child abuse, abandonment, or neglect under this chapter and who, while acting in his or her professional capacity or within the scope of employment, knows or has reasonable cause to suspect that abuse, neglect, or abandonment of an animal has occurred at the same address shall report such knowledge or suspicion within 72 hours to his or her supervisor for submission to a local animal control agency.

(a) The report must include all of the following information:

1. A description of the animal and of the animal abuse or neglect.

2. The name and address of the animal's owner or keeper, if that information is available to the child protective investigator.

3. Any other information available to the child protective investigator which might assist an animal control officer or law enforcement officer in establishing the cause of the animal abuse or neglect and the manner in which it occurred.

(b) A child protective investigator who makes a report under this section is presumed to have acted in good faith. An investigator acting in good faith who makes a report under this section or who cooperates in an investigation of suspected

animal abuse or neglect is immune from any civil or criminal liability or administrative penalty or sanction that might otherwise be incurred in connection with making the report or otherwise cooperating.

(3) RESPONSIBILITIES OF ANIMAL CONTROL OFFICERS.—Any individual who knows or has reasonable cause to suspect that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare or that a child is in need of supervision and care and does not have a parent, a legal custodian, or a responsible adult relative immediately known and available to provide supervision and care to that child shall immediately report such knowledge or suspicion to the department's central abuse hotline.

(4) PENALTIES.—

(a) A child protective investigator who is required to report known or suspected abuse, neglect, cruelty, or abandonment of an animal and who knowingly and willfully fails to do so commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) An animal control officer who fails to report an incident of known or suspected child abuse or neglect, as required by s. 39.201, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) TRAINING.—The department, in consultation with the Florida Animal Control Association, shall develop or adapt and use already available training materials into a 1-hour training for all child protective investigators and animal control officers who are required to investigate child abuse and neglect

or animal abuse and neglect on the accurate and timely identification and reporting of child and animal abuse and neglect and the interconnectedness of such abuse and neglect. The department shall incorporate training on the identification of harm to and neglect of animals and the relationship of such activities to child welfare case practice into required training for child protective investigators.

(6) RULEMAKING.—The department shall adopt rules to implement this section, including rules establishing protocols for transmitting to local animal control agencies the addresses where known or suspected animal abuse has been observed by a child protective investigator acting in his or her professional capacity.

Section 6. Subsections (1) and (2) of section 39.302, Florida Statutes, are amended to read:

39.302 Protective investigations of institutional child abuse, abandonment, or neglect.—

(1) The department shall conduct a child protective investigation of each report of institutional child abuse, abandonment, or neglect. Upon receipt of a report that alleges that an employee or agent of the department, or any other entity or person covered by s. 39.01(36) or (53) ~~s. 39.01(37) or (54)~~, acting in an official capacity, has committed an act of child abuse, abandonment, or neglect, the department shall initiate a child protective investigation within the timeframe established under s. 39.101(1) ~~s. 39.201(5)~~ and notify the appropriate state attorney, law enforcement agency, and licensing agency, which shall immediately conduct a joint investigation, unless independent investigations are more feasible. When conducting

investigations or having face-to-face interviews with the child, investigation visits shall be unannounced unless it is determined by the department or its agent that unannounced visits threaten the safety of the child. If a facility is exempt from licensing, the department shall inform the owner or operator of the facility of the report. Each agency conducting a joint investigation is entitled to full access to the information gathered by the department in the course of the investigation. A protective investigation must include an interview with the child's parent or legal guardian. The department shall make a full written report to the state attorney within 3 working days after making the oral report. A criminal investigation shall be coordinated, whenever possible, with the child protective investigation of the department. Any interested person who has information regarding the offenses described in this subsection may forward a statement to the state attorney as to whether prosecution is warranted and appropriate. Within 15 days after the completion of the investigation, the state attorney shall report the findings to the department and shall include in the report a determination of whether or not prosecution is justified and appropriate in view of the circumstances of the specific case.

(2)(a) If in the course of the child protective investigation, the department finds that a subject of a report, by continued contact with children in care, constitutes a threatened harm to the physical health, mental health, or welfare of the children, the department may restrict a subject's access to the children pending the outcome of the investigation. The department or its agent shall employ the least restrictive

means necessary to safeguard the physical health, mental health, and welfare of the children in care. This authority shall apply only to child protective investigations in which there is some evidence that child abuse, abandonment, or neglect has occurred. A subject of a report whose access to children in care has been restricted is entitled to petition the circuit court for judicial review. The court shall enter written findings of fact based upon the preponderance of evidence that child abuse, abandonment, or neglect did occur and that the department's restrictive action against a subject of the report was justified in order to safeguard the physical health, mental health, and welfare of the children in care. The restrictive action of the department shall be effective for no more than 90 days without a judicial finding supporting the actions of the department.

(b) In an institutional investigation, the alleged perpetrator may be represented by an attorney, at his or her own expense, or may be accompanied by another person, if the attorney or the person executes an affidavit of understanding with the department and agrees to comply with the confidentiality requirements under s. 39.202. The absence of an attorney or an accompanying person does not prevent the department from proceeding with other aspects of the investigation, including interviews with other persons. In institutional child abuse cases when the institution is not operational and the child cannot otherwise be located, the investigation must commence immediately upon the resumption of operation. If requested by a state attorney or local law enforcement agency, the department shall furnish all investigative reports to such state attorney or agency.

(c) ~~(b)~~ Upon completion of the department's child protective investigation, the department may make application to the circuit court for continued restrictive action against any person necessary to safeguard the physical health, mental health, and welfare of the children in care.

Section 7. Section 828.126, Florida Statutes, is amended to read:

828.126 Sexual activities involving animals.—The Legislature recognizes that animal abuse of any kind is a type of interpersonal violence and often co-occurs with child abuse and other forms of family violence, including elder abuse and domestic violence, and that early identification of animal abuse, including animal sexual abuse, serves the purpose of providing another important tool to safeguard children from abuse and neglect, to provide needed support to families, and to protect animals.

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

(a) "Sexual conduct" means any touching or fondling by a person, either directly or through clothing, of the sex organs or anus of an animal or any transfer or transmission of semen by the person upon any part of the animal for the purpose of sexual gratification or arousal of the person.

(b) "Sexual contact" means any contact, however slight, between the mouth, sex organ, or anus of a person and the sex organ or anus of an animal, or any penetration, however slight, of any part of the body of the person into the sex organ or anus of an animal, or the insertion of any part of the animal's body into the vaginal or anal opening of the person ~~any penetration of the sex organ or anus of the person into the mouth of the~~

~~animal~~, for the purpose of sexual gratification or sexual arousal of the person.

(2) A person may not:

(a) Knowingly engage in any sexual conduct or sexual contact with an animal;

(b) Knowingly cause, aid, or abet another person to engage in any sexual conduct or sexual contact with an animal;

(c) Knowingly permit any sexual conduct or sexual contact with an animal to be conducted on any premises under his or her charge or control; or

(d) Knowingly organize, promote, conduct, advertise, aid, abet, participate in as an observer, or perform any service in the furtherance of an act involving any sexual conduct or sexual contact with an animal ~~for a commercial or recreational purpose~~.

(3) A person who violates this section commits a felony of the third ~~misdemeanor of the first~~ degree, punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084.

(4) In addition to other penalties prescribed by law, the court shall issue an order prohibiting a person convicted under this section from harboring, owning, possessing, or exercising control over any animal; from residing in any household where animals are present; and from engaging in an occupation, whether paid or unpaid, or participating in a volunteer position at any establishment where animals are present. The order may be effective for the length of time the court deems reasonable, but must be effective for at least 5 years after the convicted person's release from custody.

(5) ~~(4)~~ This section does not apply to accepted animal husbandry practices, conformation judging practices, or accepted

veterinary medical practices.

Section 8. Paragraph (a) of subsection (4) of section 828.27, Florida Statutes, is amended to read:

828.27 Local animal control or cruelty ordinances; penalty.—

(4)(a)1. County-employed animal control officers must, and municipally employed animal control officers may, successfully complete a 40-hour minimum standards training course. Such course must include, but is not limited to, training for: animal cruelty investigations, search and seizure, animal handling, courtroom demeanor, and civil citations. The course curriculum must be approved by the Florida Animal Control Association. An animal control officer who successfully completes such course shall be issued a certificate indicating that he or she has received a passing grade.

2. County-employed and municipally employed animal control officers must successfully complete the 1-hour training course developed by the Department of Children and Families and the Florida Animal Control Association pursuant to s. 39.208(5). Animal control officers must be provided with opportunities to attend the training during their normal work hours. The training must advise them that failure to report an incident of known or suspected child abuse, abandonment, or neglect, as required by s. 39.201, is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3.~~2.~~ Any animal control officer who is authorized before January 1, 1990, by a county or municipality to issue citations is not required to complete the minimum standards training course.

4.~~3.~~ In order to maintain valid certification, every 2 years each certified animal control officer must complete 4 hours of postcertification continuing education training. Such training may include, but is not limited to, training for: animal cruelty investigations, search and seizure, animal handling, courtroom demeanor, and civil citations.

Section 9. Paragraph (f) of subsection (3) of section 921.0022, Florida Statutes, is amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(f) LEVEL 6

Florida Statute	Felony Degree	Description
316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
499.0051(2)	2nd	Knowing forgery of

		transaction history, transaction information, or transaction statement.
499.0051(3)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
499.0051(4)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
775.0875(1)	3rd	Taking firearm from law enforcement officer.
784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
784.041	3rd	Felony battery; domestic battery by strangulation.
784.048(3)	3rd	Aggravated stalking;

		credible threat.
784.048(5)	3rd	Aggravated stalking of person under 16.
784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
784.081(2)	2nd	Aggravated assault on specified official or employee.
784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
784.083(2)	2nd	Aggravated assault on code inspector.

787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
790.164(1)	2nd	False report concerning bomb, explosive, weapon of mass destruction, act of arson or violence to state property, or use of firearms in violent manner.
790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
794.011(8)(a)	3rd	Solicitation of minor to participate in sexual

		activity by custodial adult.
794.05(1)	2nd	Unlawful sexual activity with specified minor.
800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.

812.014(2)(b)1.	2nd	Property stolen $20,000 or more, but less than $100,000, grand theft in 2nd degree.
812.014(6)	2nd	Theft; property stolen $3,000 or more; coordination of others.
812.015(9)(a)	2nd	Retail theft; property stolen $750 or more; second or subsequent conviction.
812.015(9)(b)	2nd	Retail theft; aggregated property stolen within 30 days is $3,000 or more; coordination of others.
812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.

817.505(4)(b)	2nd	Patient brokering; 10 or more patients.
825.102(1)	3rd	Abuse of an elderly person or disabled adult.
825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than $10,000.
827.03(2)(c)	3rd	Abuse of a child.
827.03(2)(d)	3rd	Neglect of a child.
827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such

		performance.
828.126	3rd	Sexual activities involving animals.
836.05	2nd	Threats; extortion.
836.10	2nd	Written threats to kill, do bodily injury, or conduct a mass shooting or an act of terrorism.
843.12	3rd	Aids or assists person to escape.
847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
847.0135(2)	3rd	Facilitates sexual conduct of or with a

		minor or the visual depiction of such conduct.
914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
944.40	2nd	Escapes.
944.46	3rd	Harboring, concealing, aiding escaped prisoners.
944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.

951.22(1)(i)	3rd	Firearm or weapon introduced into county detention facility.

Section 10. Section 1006.061, Florida Statutes, is amended to read:

1006.061 Child abuse, abandonment, and neglect policy; sexual abuse of a child policy; and child-on-child sexual abuse policy.—Each district school board, charter school, and private school that accepts scholarship students who participate in a state scholarship program under chapter 1002 shall:

(1) Post in a prominent place in each school a notice that, pursuant to chapter 39, all employees and agents of the district school board, charter school, or private school have an affirmative duty to report all actual or suspected cases of child abuse, abandonment, or neglect, or child-on-child sexual abuse; have immunity from liability if they report such cases in good faith; and have a duty to comply with child protective investigations and all other provisions of law relating to child abuse, abandonment, and neglect and child-on-child sexual abuse. The notice shall also include the statewide toll-free telephone number of the central abuse hotline.

(2) Post in a prominent place at each school site and on each school's Internet website, if available, the policies and procedures for reporting alleged misconduct by instructional personnel or school administrators which affects the health, safety, or welfare of a student; the contact person to whom the report is made; and the penalties imposed on instructional

personnel or school administrators who fail to report suspected or actual child abuse or alleged misconduct by other instructional personnel or school administrators.

(3) Require the principal of the charter school or private school, or the district school superintendent, or the superintendent's designee, at the request of the Department of Children and Families, to act as a liaison to the Department of Children and Families and the Child Protection Team, as defined in s. 39.01, when in a case of suspected child abuse, abandonment, or neglect or an unlawful sexual offense involving a child the case is referred to such a team; except that this does not relieve or restrict the Department of Children and Families from discharging its duty and responsibility under the law to investigate and report every suspected or actual case of child abuse, abandonment, or neglect or unlawful sexual offense involving a child.

(4)(a) Post in a prominent place in a clearly visible location and public area of the school which is readily accessible to and widely used by students a sign in English and Spanish that contains:

1. The statewide toll-free telephone number of the central abuse hotline as provided in chapter 39;

2. Instructions to call 911 for emergencies; and

3. Directions for accessing the Department of Children and Families Internet website for more information on reporting abuse, abandonment, or neglect, and child-on-child sexual abuse ~~exploitation~~.

(b) The information in paragraph (a) must be put on at least one poster in each school, on a sheet that measures at

least 11 inches by 17 inches, produced in large print, and placed at student eye level for easy viewing.

The Department of Education shall coordinate with the Department of Children and Families to develop, update annually when necessary, and publish on the Department of Education's ~~department's~~ Internet website, sample notices suitable for posting in accordance with subsections (1), (2), and (4).

Section 11. Present subsections (2) through (6) of section 1012.795, Florida Statutes, are redesignated as subsections (3) through (7), respectively, a new subsection (2) is added to that section, and subsection (1) of that section is republished, to read:

1012.795 Education Practices Commission; authority to discipline.—

(1) The Education Practices Commission may suspend the educator certificate of any instructional personnel or school administrator, as defined in s. 1012.01(2) or (3), for up to 5 years, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students for that period of time, after which the person may return to teaching as provided in subsection (5) ~~(4)~~; may revoke the educator certificate of any person, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students for up to 10 years, with reinstatement subject to subsection (5) ~~(4)~~; may permanently revoke the educator certificate of any person thereby denying that person the right

to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students; may suspend a person's educator certificate, upon an order of the court or notice by the Department of Revenue relating to the payment of child support; or may impose any other penalty provided by law, if the person:

(a) Obtained or attempted to obtain an educator certificate by fraudulent means.

(b) Knowingly failed to report actual or suspected child abuse as required in s. 1006.061 or report alleged misconduct by instructional personnel or school administrators which affects the health, safety, or welfare of a student as required in s. 1012.796.

(c) Has proved to be incompetent to teach or to perform duties as an employee of the public school system or to teach in or to operate a private school.

(d) Has been guilty of gross immorality or an act involving moral turpitude as defined by rule of the State Board of Education, including engaging in or soliciting sexual, romantic, or lewd conduct with a student or minor.

(e) Has had an educator certificate or other professional license sanctioned by this or any other state or has had the authority to practice the regulated profession revoked, suspended, or otherwise acted against, including a denial of certification or licensure, by the licensing or certifying authority of any jurisdiction, including its agencies and subdivisions. The licensing or certifying authority's acceptance of a relinquishment, stipulation, consent order, or other settlement offered in response to or in anticipation of the

filing of charges against the licensee or certificateholder shall be construed as action against the license or certificate. For purposes of this section, a sanction or action against a professional license, a certificate, or an authority to practice a regulated profession must relate to being an educator or the fitness of or ability to be an educator.

(f) Has been convicted or found guilty of, has had adjudication withheld for, or has pled guilty or nolo contendere to a misdemeanor, felony, or any other criminal charge, other than a minor traffic violation.

(g) Upon investigation, has been found guilty of personal conduct that seriously reduces that person's effectiveness as an employee of the district school board.

(h) Has breached a contract, as provided in s. 1012.33(2) or s. 1012.335.

(i) Has been the subject of a court order or notice by the Department of Revenue pursuant to s. 409.2598 directing the Education Practices Commission to suspend the certificate as a result of noncompliance with a child support order, a subpoena, an order to show cause, or a written agreement with the Department of Revenue.

(j) Has violated the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules.

(k) Has otherwise violated the provisions of law, the penalty for which is the revocation of the educator certificate.

(l) Has violated any order of the Education Practices Commission.

(m) Has been the subject of a court order or plea agreement

in any jurisdiction which requires the certificateholder to surrender or otherwise relinquish his or her educator's certificate. A surrender or relinquishment shall be for permanent revocation of the certificate. A person may not surrender or otherwise relinquish his or her certificate prior to a finding of probable cause by the commissioner as provided in s. 1012.796.

(n) Has been disqualified from educator certification under s. 1012.315.

(o) Has committed a third recruiting offense as determined by the Florida High School Athletic Association (FHSAA) pursuant to s. 1006.20(2)(b).

(p) Has violated test security as provided in s. 1008.24.

(2) Notwithstanding subsection (1), the Education Practices Commission shall suspend, for a period of not less than 1 year, the educator certificate of any instructional personnel or school administrator who knowingly fails to report known or suspected child abuse pursuant to s. 39.201.

Section 12. Subsections (1) through (5) of section 39.307, Florida Statutes, are amended to read:

39.307 Reports of child-on-child sexual abuse.—

(1) Upon receiving a report alleging child-on-child ~~juvenile~~ sexual abuse ~~or inappropriate sexual behavior as defined in s. 39.01~~, the department shall assist the family, child, and caregiver in receiving appropriate services to address the allegations of the report.

(a) The department shall ensure that information describing the child's history of child sexual abuse is included in the child's electronic record. This record must also include

information describing the services the child has received as a result of his or her involvement with child sexual abuse.

(b) Placement decisions for a child who has been involved with child sexual abuse must include consideration of the needs of the child and any other children in the placement.

(c) The department shall monitor the occurrence of child sexual abuse and the provision of services to children involved in child-on-child ~~child sexual abuse or juvenile~~ sexual abuse~~, or who have displayed inappropriate sexual behavior~~.

(2) The department, contracted sheriff's office providing protective investigation services, or contracted case management personnel responsible for providing services, at a minimum, shall adhere to the following procedures:

(a) The purpose of the response to a report alleging child-on-child ~~juvenile~~ sexual abuse ~~behavior or inappropriate sexual behavior~~ shall be explained to the caregiver.

1. The purpose of the response shall be explained in a manner consistent with legislative purpose and intent provided in this chapter.

2. The name and office telephone number of the person responding shall be provided to the caregiver of the alleged abuser ~~or child who has exhibited inappropriate sexual behavior~~ and the victim's caregiver.

3. The possible consequences of the department's response, including outcomes and services, shall be explained to the caregiver of the alleged abuser ~~or child who has exhibited inappropriate sexual behavior~~ and the victim's caregiver.

(b) The caregiver of the alleged abuser ~~or child who has exhibited inappropriate sexual behavior~~ and the victim's

caregiver shall be involved to the fullest extent possible in determining the nature of the sexual behavior concerns and the nature of any problem or risk to other children.

(c) The assessment of risk and the perceived treatment needs of the alleged abuser ~~or child who has exhibited inappropriate sexual behavior~~, the victim, and respective caregivers shall be conducted by the district staff, the child protection team of the Department of Health, and other providers under contract with the department to provide services to the caregiver of the alleged offender, the victim, and the victim's caregiver.

(d) The assessment shall be conducted in a manner that is sensitive to the social, economic, and cultural environment of the family.

(e) If necessary, the child protection team of the Department of Health shall conduct a physical examination of the victim, which is sufficient to meet forensic requirements.

(f) Based on the information obtained from the alleged abuser ~~or child who has exhibited inappropriate sexual behavior~~, his or her caregiver, the victim, and the victim's caregiver, an assessment of service and treatment needs must be completed and, if needed, a case plan developed within 30 days.

(g) The department shall classify the outcome of the report as follows:

1. Report closed. Services were not offered because the department determined that there was no basis for intervention.

2. Services accepted by alleged abuser. Services were offered to the alleged abuser ~~or child who has exhibited inappropriate sexual behavior~~ and accepted by the caregiver.

3. Report closed. Services were offered to the alleged abuser ~~or child who has exhibited inappropriate sexual behavior~~, but were rejected by the caregiver.

4. Notification to law enforcement. The risk to the victim's safety and well-being cannot be reduced by the provision of services or the caregiver rejected services, and notification of the alleged delinquent act or violation of law to the appropriate law enforcement agency was initiated.

5. Services accepted by victim. Services were offered to the victim and accepted by the caregiver.

6. Report closed. Services were offered to the victim but were rejected by the caregiver.

(3) If services have been accepted by the alleged abuser ~~or child who has exhibited inappropriate sexual behavior~~, the victim, and respective caregivers, the department shall designate a case manager and develop a specific case plan.

(a) Upon receipt of the plan, the caregiver shall indicate its acceptance of the plan in writing.

(b) The case manager shall periodically review the progress toward achieving the objectives of the plan in order to:

1. Make adjustments to the plan or take additional action as provided in this part; or

2. Terminate the case if indicated by successful or substantial achievement of the objectives of the plan.

(4) Services provided to the alleged abuser ~~or child who has exhibited inappropriate sexual behavior~~, the victim, and respective caregivers or family must be voluntary and of necessary duration.

(5) If the family or caregiver of the alleged abuser ~~or~~

~~child who has exhibited inappropriate sexual behavior~~ fails to adequately participate or allow for the adequate participation of the child in the services or treatment delineated in the case plan, the case manager may recommend that the department:

(a) Close the case;

(b) Refer the case to mediation or arbitration, if available; or

(c) Notify the appropriate law enforcement agency of failure to comply.

Section 13. Paragraph (t) of subsection (2) of section 39.202, Florida Statutes, is amended to read:

39.202 Confidentiality of reports and records in cases of child abuse or neglect.—

(2) Except as provided in subsection (4), access to such records, excluding the name of, or other identifying information with respect to, the reporter which shall be released only as provided in subsection (5), shall be granted only to the following persons, officials, and agencies:

(t) Persons with whom the department is seeking to place the child or to whom placement has been granted, including foster parents for whom an approved home study has been conducted, the designee of a licensed child-caring agency as defined in s. 39.01 ~~s. 39.01(41)~~, an approved relative or nonrelative with whom a child is placed pursuant to s. 39.402, preadoptive parents for whom a favorable preliminary adoptive home study has been conducted, adoptive parents, or an adoption entity acting on behalf of preadoptive or adoptive parents.

Section 14. Subsection (6) of section 39.301, Florida Statutes, is amended to read:

39.301 Initiation of protective investigations.—

(6) Upon commencing an investigation under this part, if a report was received from a reporter under s. 39.201(1)(a)2. ~~s. 39.201(1)(b)~~, the protective investigator must provide his or her contact information to the reporter within 24 hours after being assigned to the investigation. The investigator must also advise the reporter that he or she may provide a written summary of the report made to the central abuse hotline to the investigator which shall become a part of the electronic child welfare case file.

Section 15. Paragraph (c) of subsection (1) of section 39.521, Florida Statutes, is amended to read:

39.521 Disposition hearings; powers of disposition.—

(1) A disposition hearing shall be conducted by the court, if the court finds that the facts alleged in the petition for dependency were proven in the adjudicatory hearing, or if the parents or legal custodians have consented to the finding of dependency or admitted the allegations in the petition, have failed to appear for the arraignment hearing after proper notice, or have not been located despite a diligent search having been conducted.

(c) When any child is adjudicated by a court to be dependent, the court having jurisdiction of the child has the power by order to:

1. Require the parent and, when appropriate, the legal guardian or the child to participate in treatment and services identified as necessary. The court may require the person who has custody or who is requesting custody of the child to submit to a mental health or substance abuse disorder assessment or

evaluation. The order may be made only upon good cause shown and pursuant to notice and procedural requirements provided under the Florida Rules of Juvenile Procedure. The mental health assessment or evaluation must be administered by a qualified professional as defined in s. 39.01, and the substance abuse assessment or evaluation must be administered by a qualified professional as defined in s. 397.311. The court may also require such person to participate in and comply with treatment and services identified as necessary, including, when appropriate and available, participation in and compliance with a mental health court program established under chapter 394 or a treatment-based drug court program established under s. 397.334. Adjudication of a child as dependent based upon evidence of harm as defined in s. 39.01(34)(g) ~~s. 39.01(35)(g)~~ demonstrates good cause, and the court shall require the parent whose actions caused the harm to submit to a substance abuse disorder assessment or evaluation and to participate and comply with treatment and services identified in the assessment or evaluation as being necessary. In addition to supervision by the department, the court, including the mental health court program or the treatment-based drug court program, may oversee the progress and compliance with treatment by a person who has custody or is requesting custody of the child. The court may impose appropriate available sanctions for noncompliance upon a person who has custody or is requesting custody of the child or make a finding of noncompliance for consideration in determining whether an alternative placement of the child is in the child's best interests. Any order entered under this subparagraph may be made only upon good cause shown. This subparagraph does not

authorize placement of a child with a person seeking custody of the child, other than the child's parent or legal custodian, who requires mental health or substance abuse disorder treatment.

2. Require, if the court deems necessary, the parties to participate in dependency mediation.

3. Require placement of the child either under the protective supervision of an authorized agent of the department in the home of one or both of the child's parents or in the home of a relative of the child or another adult approved by the court, or in the custody of the department. Protective supervision continues until the court terminates it or until the child reaches the age of 18, whichever date is first. Protective supervision shall be terminated by the court whenever the court determines that permanency has been achieved for the child, whether with a parent, another relative, or a legal custodian, and that protective supervision is no longer needed. The termination of supervision may be with or without retaining jurisdiction, at the court's discretion, and shall in either case be considered a permanency option for the child. The order terminating supervision by the department must set forth the powers of the custodian of the child and include the powers ordinarily granted to a guardian of the person of a minor unless otherwise specified. Upon the court's termination of supervision by the department, further judicial reviews are not required if permanency has been established for the child.

4. Determine whether the child has a strong attachment to the prospective permanent guardian and whether such guardian has a strong commitment to permanently caring for the child.

Section 16. Paragraph (c) of subsection (1) of section

39.6012, Florida Statutes, is amended to read:

39.6012 Case plan tasks; services.—

(1) The services to be provided to the parent and the tasks that must be completed are subject to the following:

(c) If there is evidence of harm as defined in s. 39.01(34)(g) ~~s. 39.01(35)(g)~~, the case plan must include as a required task for the parent whose actions caused the harm that the parent submit to a substance abuse disorder assessment or evaluation and participate and comply with treatment and services identified in the assessment or evaluation as being necessary.

Section 17. Subsection (4) of section 322.09, Florida Statutes, is amended to read:

322.09 Application of minors; responsibility for negligence or misconduct of minor.—

(4) Notwithstanding subsections (1) and (2), if a caregiver of a minor who is under the age of 18 years and is in out-of-home care as defined in s. 39.01 ~~s. 39.01(55)~~, an authorized representative of a residential group home at which such a minor resides, the caseworker at the agency at which the state has placed the minor, or a guardian ad litem specifically authorized by the minor's caregiver to sign for a learner's driver license signs the minor's application for a learner's driver license, that caregiver, group home representative, caseworker, or guardian ad litem does not assume any obligation or become liable for any damages caused by the negligence or willful misconduct of the minor by reason of having signed the application. Before signing the application, the caseworker, authorized group home representative, or guardian ad litem shall

notify the caregiver or other responsible party of his or her intent to sign and verify the application.

Section 18. Paragraph (p) of subsection (4) of section 394.495, Florida Statutes, is amended to read:

394.495 Child and adolescent mental health system of care; programs and services.—

(4) The array of services may include, but is not limited to:

(p) Trauma-informed services for children who have suffered sexual exploitation as defined in s. 39.01(76)(g) ~~s. 39.01(77)(g)~~.

Section 19. Section 627.746, Florida Statutes, is amended to read:

627.746 Coverage for minors who have a learner's driver license; additional premium prohibited.—An insurer that issues an insurance policy on a private passenger motor vehicle to a named insured who is a caregiver of a minor who is under the age of 18 years and is in out-of-home care as defined in s. 39.01(54) ~~s. 39.01(55)~~ may not charge an additional premium for coverage of the minor while the minor is operating the insured vehicle, for the period of time that the minor has a learner's driver license, until such time as the minor obtains a driver license.

Section 20. Paragraph (g) of subsection (2) of section 934.03, Florida Statutes, is amended to read:

934.03 Interception and disclosure of wire, oral, or electronic communications prohibited.—

(2)

(g) It is lawful under this section and ss. 934.04-934.09

for an employee of:

1. An ambulance service licensed pursuant to s. 401.25, a fire station employing firefighters as defined by s. 633.102, a public utility, a law enforcement agency as defined by s. 934.02(10), or any other entity with published emergency telephone numbers;

2. An agency operating an emergency telephone number "911" system established pursuant to s. 365.171; or

3. The central abuse hotline operated pursuant to s. 39.101 ~~s. 39.201~~

to intercept and record incoming wire communications; however, such employee may intercept and record incoming wire communications on designated "911" telephone numbers and published nonemergency telephone numbers staffed by trained dispatchers at public safety answering points only. It is also lawful for such employee to intercept and record outgoing wire communications to the numbers from which such incoming wire communications were placed when necessary to obtain information required to provide the emergency services being requested. For the purpose of this paragraph, the term "public utility" has the same meaning as provided in s. 366.02 and includes a person, partnership, association, or corporation now or hereafter owning or operating equipment or facilities in the state for conveying or transmitting messages or communications by telephone or telegraph to the public for compensation.

Section 21. Paragraph (c) of subsection (1) of section 934.255, Florida Statutes, is amended to read:

934.255 Subpoenas in investigations of sexual offenses.—

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

(c) "Sexual abuse of a child" means a criminal offense based on any conduct described in s. 39.01(76) ~~s. 39.01(77)~~.

Section 22. Subsection (5) of section 960.065, Florida Statutes, is amended to read:

960.065 Eligibility for awards.—

(5) A person is not ineligible for an award pursuant to paragraph (2)(a), paragraph (2)(b), or paragraph (2)(c) if that person is a victim of sexual exploitation of a child as defined in s. 39.01(76)(g) ~~s. 39.01(77)(g)~~.

Section 23. This act shall take effect July 1, 2020.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Children, Families, and Elder Affairs, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health and Human Services
Health Policy
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR LAUREN BOOK
32nd District

February 6, 2020

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

Chair Benacquisto:

I respectfully request that **SB 7000— Reporting Abuse, Abandonment, and Neglect** be placed on the agenda for the next Committee on Rules meeting.

Should you have any questions or concerns, please feel free to contact my office or me. Thank you in advance for your consideration.

Thank you,

Lauren Book

Senator Lauren Book
Senate District 32

Cc: John B. Phelps, Staff Director
Cynthia Futch, Administrative Assistant

REPLY TO:
☐ 967 Nob Hill Road, Plantation, Florida 33324 (954) 424-6674
☐ 202 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5032

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

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-19-20
Meeting Date

7009
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Greg Pound

Job Title Saving families

Address 9166 Sunrise Dr
Street

Phone _____

_____
City *State* *Zip*

Email _____

Speaking: ☐ For ☐ Against ☒ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

CourtSmart Tag Report

Room: EL 110 **Case No.:** **Type:**
Caption: Senate Rules Committee **Judge:**

Started: 2/19/2020 10:03:10 AM
Ends: 2/19/2020 11:28:25 AM **Length: 01:25:16**

10:03:09 AM Meeting called to order
10:03:29 AM Roll call
10:03:31 AM Quorum is present
10:04:00 AM Chair instructions
10:04:27 AM Motion to TP bills
10:04:36 AM TPd bills tab 12 - CS/SB 7010 and tab 19 CS/CS/SB 1794
10:04:39 AM Tab 5 SB388
10:04:57 AM Senator Hooper explains the bill
10:05:01 AM No questions
10:05:06 AM No public appearance
10:05:09 AM No debate
10:05:15 AM Senator Hooper Waives close
10:05:18 AM Roll call
10:05:22 AM SB 388 is reported favorably
10:05:57 AM Tab 6 CS/CS/SB 1332 Towing and Immobilizing Vehicles and Vessels
10:06:33 AM Senator Hooper explains the bill
10:06:39 AM No questions
10:06:40 AM Candice Ericks, Broward & Palm Beach Counties, in support
10:06:59 AM Jose Diaz, Professional Wrecker Operators of Florida Tallahassee, in support
10:07:00 AM No debate
10:07:04 AM Roll call
10:07:06 AM CS/C/SB 1332 is reported favorably
10:07:36 AM Tab 1 SB 162 Public Records
10:07:48 AM Senator Perry explains the bill
10:08:20 AM Take up Amendment 733682- explained by Senator Perry
10:09:05 AM Questions on the amendment
10:09:42 AM None
10:09:46 AM Public Appearance - Laura Youmans, Legislative Council Florida Association of Counties Tallahassee, on amendment is against
10:11:48 AM Questions- Senator Rodriguez to Laura Youmans
10:12:49 AM Ms. Laura Youmans responds
10:14:50 AM Debate on amendment- none
10:15:00 AM Senator Perry waives close
10:15:06 AM Amendment 733682 is adopted
10:15:10 AM Back on the bill
10:15:13 AM Questions: Senator Thurston with question
10:15:27 AM Senator Perry responds
10:15:55 AM Senator Thurston with follow up
10:16:53 AM Senator Perry answers
10:17:41 AM Senator Lee with question
10:17:51 AM Senator Perry responds
10:18:15 AM Public Appearance - Starla Brown, Delesy Beach Americans for Prosperity, in support
10:18:30 AM Laura Youmans information
10:18:58 AM Senator Perry closes on the bill
10:19:06 AM Roll call on the amended bill
10:19:23 AM CS for SB 162 is reported favorably
10:19:56 AM Take up Tab 2 SB 1080 Nonopioid Alternatives
10:20:10 AM Senator Perry explains the bill
10:20:18 AM Questions on the bill - none
10:20:30 AM No testimony, no debate
10:20:36 AM Senator Perry waives close
10:20:37 AM Roll call on SB 1080

10:20:43 AM SB 1080 is reported favorably
10:21:10 AM Tab 3 SB 7034 Residential Facilites Serving Victims of Sexual Exploitation
10:21:19 AM Senator Perry explains the bill
10:21:24 AM Questions on the bill - none
10:21:50 AM No debate
10:21:52 AM Senator Perry waives close
10:21:56 AM Roll call
10:21:59 AM SB 7034 is reported favorably
10:22:11 AM Tab 11 CS/SB 1590 Juror Sanctions
10:22:31 AM Senator Powell explains the bill
10:22:35 AM Questions - none; No public appearance
10:23:08 AM Debate by Senator Brandes
10:23:16 AM Senator Simmons with debate
10:23:57 AM No further debate
10:24:51 AM Senator Powell closes on the bill
10:25:39 AM Roll call on CS/SB 1590
10:26:41 AM CS/SB 1590 is reported favorably
10:27:11 AM Tab 7 CS/CS/SB 538 Emergency Reporting
10:27:26 AM Senator Diaz explains the bill
10:27:37 AM Questions on the bill- none
10:28:18 AM Jared Rosenstein FDEM Tallahassee in support
10:28:26 AM No debate
10:28:29 AM Senator Diaz waives close
10:28:33 AM Roll call
10:28:39 AM CS/CS/SB 538 roll call
10:28:45 AM CS/CS/SB 538 is reported favorably
10:29:00 AM Tab 8 SB 1084 Emotional Support Animals
10:29:17 AM Senator Diaz explains the bill
10:29:24 AM Questions on the bill- Senator Braynon
10:29:59 AM Senator Diaz responds
10:30:46 AM Senator Montford with question
10:30:55 AM Senator Diaz responds
10:32:03 AM Senator Stargel with question
10:32:12 AM Senator Diaz answers
10:32:25 AM Senator Gibson
10:32:36 AM Senator Diaz responds
10:33:23 AM Senator Gibson with follow up question
10:33:44 AM Senator Diaz answers
10:33:58 AM Public appearance
10:33:59 AM Travis Moore, St. Petersburg Community Associations Institute, in support
10:34:06 AM Andrew Rutledge, Public Policy Florida Realtors Tallahassee, in support
10:34:13 AM Kelly Mallette, Florida Apartment Association Tallahassee, in support
10:34:47 AM Greg Pound Largo FL Saving Families information
10:35:29 AM No debate
10:35:30 AM Senator Diaz waives close
10:35:43 AM Roll call
10:35:44 AM SB 1084 is reported favorably
10:36:04 AM Tab 13 SB 7014
10:36:22 AM Payment Instrument Transaction Information/Office of Financial Regulation
10:36:31 AM Bill is explained by Senator Rouson
10:37:05 AM Questions on the bill- none
10:37:13 AM No testimony
10:37:18 AM No debate
10:37:21 AM Roll call
10:37:29 AM SB 7014 is reported favorably
10:38:05 AM Tab 4 CS/SB 364 Independent Living Task Force
10:38:21 AM Senator Rader explains the bill
10:38:28 AM Amendment 663092 taken up and explained by Senator Rader
10:39:16 AM No question
10:39:21 AM No objections; amendment is adopted
10:39:31 AM Amendment 406430 is explained by Senator Rader
10:39:43 AM No questions public; no debate; waive close

10:39:52 AM Amendment is adopted
10:40:02 AM Amendment 5910054 is explained
10:40:15 AM Amendment is adopted
10:40:17 AM Natalie Kelly, CEO FL Association of Managing Entities, in support
10:40:38 AM Roll call. CS/SB 364 is reported favorably
10:41:01 AM Tab 18 CS CS SB 1564 Genetic Information for Insurance Purposes
10:41:31 AM Senator Stargel explains the bill
10:41:37 AM Questions
10:41:41 AM Senator Brandes with question
10:41:48 AM Senator Stargel answers
10:41:52 AM Senator Brandes follow up
10:42:00 AM Senator Stargel answers
10:42:07 AM Senator Brandes follow up
10:42:19 AM Senator Stargel answers
10:42:43 AM Robert Holroy, FL Association of genetic Counselors Ft. Lauderdale, in support.
10:43:08 AM Senator Stargel waives close
10:43:09 AM Roll call
10:43:14 AM CS/CS/SB 1564 is reported favorably
10:43:44 AM Tab 14 CS/SB 344 Courts
10:44:45 AM Senator Bradley explains the bill
10:44:52 AM Questions- none
10:45:02 AM Bryan Cherry, Consultant FL Public Guardian coalition, in support
10:45:14 AM Smith AARP in support
10:45:20 AM Greg Pound Largo with information
10:46:33 AM No Debate
10:47:31 AM Senator Bradley waives close
10:47:34 AM Roll call
10:47:46 AM CS/SB 344 is reported favorably
10:48:09 AM Tab 15 CS/SB 1490 Public Officers and Employees
10:48:57 AM Bill is explained by Senator Bradley
10:49:01 AM Questions - Senator Rodriguez
10:49:53 AM Senator Bradley responds on CS SB 1490
10:51:47 AM Ryan Wiggins Pensacola in support
10:51:54 AM Alexis Lambert in support
10:54:36 AM Greg Pound with information
10:56:14 AM Debate-Senator Thurston with question for Senator Bradley regarding testimony of Ms. Lambert
10:57:06 AM Senator Bradley responds
10:57:31 AM Senator Thurston with follow up question to Chair
10:57:52 AM Senator Lee in debate
11:01:34 AM Senator Stargel with debate
11:03:03 AM Senator Bradley closes on the bill
11:04:11 AM Roll call on CS/SB 1490
11:04:50 AM CS/SB 1490 is reported favorably
11:05:07 AM Tab 16 CS/CS/SB 1286 Contraband in Specified Facilites
11:05:28 AM Senator Simmons explains the bill
11:05:37 AM Questions on the bill none
11:07:12 AM Candice Ericks, Seminole County Sherrif, in support
11:07:33 AM Jodi James, Leg Dir Melbourne Florida Cannabis Action Network, is against
11:08:36 AM Senator Brandes with question
11:09:40 AM Ms. James responds
11:09:53 AM Senator Brandes with follow up
11:10:12 AM Ms. James with answer
11:12:14 AM Senator Brandes with further question
11:12:46 AM Senator Simmons with answer
11:14:28 AM Senator Brandes with follow up
11:14:37 AM Senator Simmons answers
11:14:41 AM Debate - none
11:14:44 AM Senator Simmons waives close
11:14:51 AM Roll call
11:14:54 AM CS/CS/SB 1286 is reported favorably
11:15:19 AM Tab 9 CS/SB 1188 Records/Records of Insurers/Dept of Financial Services
11:15:38 AM Senator Albritton explains the bill

11:15:50 AM Amendment 535922 - technical
11:16:19 AM Amendment 535922 is adopted
11:16:35 AM Merdith Stanfield in support
11:16:43 AM Waive close
11:16:46 AM Roll call
11:16:52 AM CS SB 1188 as amended is reported favorably
11:17:09 AM Tab 10
11:17:10 AM SB 1256 Telegraph Companies
11:17:19 AM Senator Albritton explains the bill
11:17:51 AM Questions
11:17:55 AM Senator Brandes with question
11:18:02 AM Senator Albritton answers
11:18:19 AM No public appearance, no debate
11:18:24 AM Waive close
11:18:27 AM Roll call
11:18:30 AM SB 1256 is reported favorably
11:18:51 AM Tab 17 SB 1362 Rental Agreements
11:19:15 AM Senator Rodriguez explains the bill
11:19:28 AM Questions on the bill- Senator Lee
11:19:38 AM Senator Rodriguez responds
11:19:57 AM Senator Stargel with question
11:20:08 AM Senator Rodriguez responds
11:20:12 AM Public Appearance
11:20:22 AM Pete Dunbar, Real Propterty Section -FL Bar, in support
11:20:27 AM Ida Eskamani, New FL Majority Organize Florida, in support
11:20:37 AM Debate - Senator Stargel
11:21:23 AM Senator Rodriguez waives close
11:21:29 AM SB 1362 is reported favorably
11:22:04 AM Tab 20 SB 7000 Reporting Abuse, Abandonment, and Neglect
11:22:19 AM Senator Book explains the bill
11:22:58 AM No questions
11:23:59 AM Greg Pound Saving Families with information
11:25:27 AM Debate on the bill - none
11:26:27 AM Senator Book waives close
11:26:32 AM Roll call SB 7000 is reported favorably
11:27:55 AM Senator Braynon reports vote to affirmative on Tab 4 CS/SB 364
11:27:56 AM Senator Stargel reports vote favorable on Tab 9 CS/SB 1188
11:27:57 AM Senator Bradley reports vote favorable on Tab 3 SB 7034
11:27:58 AM Senator Farmer reports vote favorable on Tab 11 CS/SB 1590
11:27:58 AM Senator Flores reports votes favorable on Tabs 5, 6, and 8.
11:28:00 AM Senator Montford moves to adjourn the meeting
11:28:10 AM Meeting is adjourned