

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 515 Duties of the Attorney General

SPONSOR(S): Health & Human Services Committee, Commerce Committee, Judiciary Committee, Mariano

TIED BILLS: **IDEN./SIM. BILLS:** SB 1040

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Judiciary Committee	19 Y, 0 N, As CS	Mawn	Kramer
2) Commerce Committee	21 Y, 0 N, As CS	Thompson	Hamon
3) Health & Human Services Committee	18 Y, 0 N, As CS	Douaihy	Calamas
4) Appropriations Committee			

SUMMARY ANALYSIS

Under current law:

- The Florida Attorney General (“AG”) is the official Florida Supreme Court reporter, even though Florida Supreme Court opinions are now published online.
- The Safe Neighborhoods Program (“SNP”), administered by the Department of Legal Affairs (“DLA”), provides planning grants to local governments developing Neighborhood Improvement Districts. However, SNP funding was eliminated in 1992.
- Service charges are levied on various state trust funds which receive “income of a revenue nature,” including the Crimes Compensation Trust Fund (“CCTF”), which funds the Victims Compensation Program. Service charges are paid into the General Revenue Fund.
- DLA oversees the State Institutions Claims Program (“SICP”), which pays restitution for damage caused by persons supervised by specified agencies. However, DLA receives no funding to pay the claims, which instead are paid directly by each responsible agency.
- During a declared state of emergency, no person may offer any essential commodity or rent a dwelling or self-service storage unit for an unconscionable price. A price gouging prohibition lasts for 60 days and must be renewed through emergency declaration renewal.
- DLA enforces the Convenience Business Security Act (“CBSA”), which is intended to prevent violent crime at late-night convenience businesses. The Division of Alcoholic Beverages and Tobacco (“ABT”) of the Department of Business and Professional Regulation (“DBPR”) inspects most convenience businesses under other statutory authority.
- The AG is authorized to use de-identified patient information from the Prescription Drug Monitoring Database (“PDMP”) in opioid litigation through June 30, 2021, at which time the authorization sunsets.

CS/HB 515:

- Deletes obsolete provisions making the AG the Florida Supreme Court reporter and authorizing local governments to apply to the AG for non-existent SNP grant funding.
- Removes the AG from involvement in SNP registration and operation.
- Exempts the CCTF from a statutory service charge.
- Changes the agency responsible for SICP restitution claims from DLA to other specified agencies.
- Puts price-gouging prohibition renewal in the Governor’s discretion and provides that price gouging for rent of a dwelling unit or self-storage facility is only prohibited if the rental was necessary for habitation or use as a direct result of the declared emergency.
- Changes CBSA enforcement from DLA to ABT, and revises certain procedures.
- Extends the AG’s authorization to use PDMP information in her opioid litigation to June 30, 2023.

The Revenue Estimating Conference has determined the bill will increase funds in the CCTF but decrease funds in the General Revenue Fund by the same amount. See the fiscal analysis for details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Supreme Court Reporter

Since 1881, the Florida Supreme Court Clerk has been required to deliver to the Attorney General (“AG”) a copy of each volume of Florida Supreme Court opinions in the Clerk’s care or custody which the AG’s Office may be without.¹ The AG must keep the copies at her office at the capitol and has been, by law, the official Supreme Court reporter since 1885.² However, Florida Supreme Court opinions are now published online³ and in other reporters⁴ available in the AG’s law library.⁵

Safe Neighborhoods Act

A Neighborhood Improvement District (“NID”) is a district located in an area in which more than 75 percent of the land is used for residential purposes or for commercial, office, business, or industrial purposes and where there is a plan to reduce crime through environmental design, environmental security, defensible space techniques, or community policing innovations.⁶ Unless preempted by ordinance, an NID has powers as authorized in s. 163.514, F.S., including the power to improve street lighting, parks, streets, drainage, utilities, swales, and open areas and to provide safe access to mass transportation facilities.

The Safe Neighborhood Act of 1987 (“SNA”) authorized the governing body of a county or a municipality to approve NID formation⁷ by adopting a planning ordinance⁸ and required NIDs to register and file certain documents with both DLA and the Florida Department of Economic Opportunity (“DEO”).⁹ The SNA also directed local governments to cooperate with and seek the involvement of community organizations such as churches, chambers of commerce, community development corporations, civic associations, neighborhood housing services, urban leagues, and other not-for-profit organizations to create NIDs.¹⁰ There are currently 27 active NIDS in the state.¹¹

Safe Neighborhood Improvement Plan

¹ Ch. 3264, Laws of Fla. 1881; s. 16.10, F.S.

² Art. IV, s. 22, Fla. Const. of 1885 (converted to statutory law in 1968); ss. 16.10 and 16.101, F.S.

³ Florida Supreme Court opinions are available online at

https://www.floridasupremecourt.org/Opinions?sort=opinion/disposition_date%20desc.%20opinion/type%20desc.%20opinion/case_number%20asc&type=written&view=embed_custom&searchtype=opinions&recent_only=1&hide_search=1&hide_filters=1&limit=25&offset=0 (last visited Mar. 1, 2021).

⁴ Court opinions are gathered and published in chronological order in print volumes called “reporters.” Reporters may be official, i.e., government-approved reporters publishing cases within a given jurisdiction, or unofficial, i.e., published by a commercial publisher.

Northern Illinois University College of Law, *Basic Legal Research: What is a Reporter*, <https://libguides.niu.edu/c.php?g=425200&p=4976573> (last visited Mar. 1, 2021).

⁵ Department of Legal Affairs, Analysis of HB0515 (February 25, 2021).

⁶ S. 163.517, F.S.

⁷ A county or municipality may create one of four types of NIDs: a local government NID; a property owners’ association NID; a special NID; or a community redevelopment NID.

⁸ An ordinance approving NID formation must specify the NID’s name, size, and boundaries. Ss. 163.506(1)(a), 163.508(1)(b), 163.511(1)(d), 163.512(1)(a), and 163.517, F.S.

⁹ S. 163.5055(1), F.S.

¹⁰ A local government working with community organizations for NID creation may enter into agreements with and compensate such organizations to undertake any activities authorized under the SNA, except the preparation of safe neighborhood improvement plans. S. 163.523, F.S.

¹¹ Florida Department of Economic Opportunity, Division of Community Development, *Official List of Special Districts Online*, <http://specialdistrictreports.floridajobs.org/webreports/functionsdetail.aspx> (last visited Mar. 1, 2021).

Each NID must have a safe neighborhood improvement plan (“SNIP”), which must be submitted to the Department of Legal Affairs (“DLA”) for review and approval.¹² A SNIP must be consistent with the local government’s comprehensive plan,¹³ provide some method and measurement of crime reduction within the NID, and contain:

- District demographics;
- Crime activity data and analysis;
- Land use, zoning, housing, and traffic analysis;
- A determination of the problems of the crime-to-environment relationship and the NID’s stability;
- A statement of the NID’s goal’s and objectives;
- An assessment of crime prevention tactics;
- Cost estimates and the methods of financing;
- An outline of program participants and their functions and responsibilities; and
- A schedule for executing program activities.¹⁴

Each SNIP must also:

- Identify property intended for specified public uses;
- Identify publicly funded capital improvement projects to be undertaken in the NID;
- Contain adequate assurances that the improvements will be carried out under the plan;
- Provide for control retention and the establishment of any necessary restrictions or covenants;
- Identify projected improvement costs;
- Promote advertising programs to be undertaken by the NID or NID businesses;
- Suggest physical improvements necessary for NID resident or visitor safety; and
- Include law enforcement and security plans for the NID.¹⁵

Safe Neighborhoods Program

The SNA also created the now defunct Safe Neighborhoods Trust Fund (“SNTF”), which was administered by the DLA to “provide planning grants and technical assistance on a 100-percent matching basis to [authorized NIDs].”¹⁶ Under the SNTF, a local governing body was eligible for a planning grant when it passed an ordinance creating an NID and verified its commitment to providing matching funds for NID planning purposes.¹⁷ DLA reviewed, evaluated, and ranked eligible grant applications based on:

- Evidence of commitment to participate in NID activities from neighborhood organizations, homeowners, property owners, businesses or merchant associations, or concerned individuals;
- The community’s need for an NID to reduce crime; and
- The community’s need for state planning funds for successful NID implementation.¹⁸

DLA also considered the population distribution of Florida’s cities and counties to give communities of all sizes an opportunity to benefit from planning grants and could not award a planning grant to more than one NID within a local government’s boundaries in any given funding cycle.¹⁹

However, SNTF funding was eliminated in 1992. In 1993, the SNTF was converted to the Safe Neighborhood Program (“SNP”) and DLA’s SNTF-related rulemaking authority was eliminated in

¹² Ss. 163.3177 and 163.519(11), F.S.

¹³ A local government must create a comprehensive plan, which includes principles, guidelines, standards, and strategies for orderly and balanced future land development within its territorial jurisdiction. S. 163.3177, F.S.

¹⁴ Ss. 163.516(1) and (3), F.S.

¹⁵ S. 163.516(2), F.S.

¹⁶ Under the SNP, property owners’ association NIDs could receive up to \$20,000; local government NIDs could receive up to \$100,000; special neighborhood improvement districts could receive up to \$50,000; and community redevelopment NIDs could receive up to \$50,000. S. 163.517(1), F.S.

¹⁷ S. 163.517(2), F.S.

¹⁸ S. 163.517(3), F.S.

¹⁹ S. 163.517(4), F.S.

2012.²⁰ Despite the SNTF's elimination, current law still authorizes DLA to award non-existent planning grant funding under the SNP, and DLA still receives planning grant applications.²¹

NIDs in Enterprise Zones

An "enterprise zone," created under the Florida Enterprise Zone Act ("FEZA"), was a specific geographic area targeted for economic revitalization.²² The SNA authorized the governing body of any municipality or county in which the boundaries of an enterprise zone included a NID, in whole or part, to ask DLA to submit with its legislative budget request provisions to fund capital improvements relating to crime prevention.²³ Such requests could be made for 100 percent of the capital improvement costs for 25 percent of the area in the enterprise zone overlapping the NID.²⁴ The governing body could also request a 100 percent matching grant for capital improvement costs for the remaining 75 percent of the area in the enterprise zone overlapping the NID.²⁵ To be eligible for funding, the local government had to show that it could implement the project within two years after the funding date, and such funds could not be expended until after completion and approval of a SNIP.²⁶ Further, the SNA directed any county or municipality with a designated enterprise zone or which had authorized the creation of a community redevelopment area²⁷ to consider creating a NID within the zone or area. However, FEZA was repealed on December 31, 2015, by operation of a sunset provision.²⁸

DLA Duties

The SNA requires DLA to perform the following duties:

- Develop SNP design and criteria for funding NIDs;
- Develop, promulgate, and revise rules required for SNP operation, the capital improvements provisions, and any other duties assigned under the SNA;
- Develop SNP planning grant application and review procedures;
- Provide advice and technical assistance to local governments, property owners' association's, and boards of directors of certain NIDS in their efforts to promote SNA goals and apply for SNP planning grants;
- Review and evaluate applications for planning and technical assistance;
- Provide for contract management;
- Evaluate SNP performance in light of state objectives and future trends and prepare legislative recommendations;
- Act as the repository of crime prevention through community policing innovations; environmental design strategies, principles, and tactics, environmental security plans and procedures; defensible space techniques; and SNIPs;
- Provide crime prevention through community policing innovations, environmental design and security, and defensible space training;
- Provide for consultant contracts for statewide safe neighborhood development training; and
- Review and approve a SNIP prior to its adoption by a local government.²⁹

²⁰ *Id.*; see also DLA's Analysis of HB0515, *supra* note 5.

²¹ See DLA's Analysis of HB0515, *supra* note 5; see also s. 163.517, F.S.

²² See ss. 290.001-290.016, F.S.

²³ S. 163.521, F.S.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ A community redevelopment area is a slum area, blighted area, or an area in which there is a shortage of affordable housing, or a coastal and tourist area that is deteriorating and economically distressed due to outdated building density patterns, inadequate transportation and parking facilities, faulty lot or inadequate street layout, or a combination thereof which the governing body designates as appropriate for community redevelopment. S. 163.340(10), F.S.

²⁸ See ch. 2005-287, Laws of Fla.; Florida Department of Revenue, *Florida Enterprise Zone Program 2015 Legislative Changes*, https://floridarevenue.com/taxes/tips/documents/TIP-120138_TIP%2015ADM-04%20FL%20Enterprise%20Zone%20Program%202015%20Legislative%20Changes%20-%20TIP%20FINAL.pdf (last visited Mar. 1, 2021).

²⁹ S. 163.519, F.S.

However, although it continues to support local governments and existing NIDs through technical assistance with crime prevention, DLA currently lacks the staff and funding necessary to perform most of its duties under the SNA.³⁰

Crimes Compensation Trust Fund

DLA administers the Crimes Compensation Trust Fund (“CCTF”), which funds the Victim’s Compensation Program (“VCP”).³¹ The VCP provides financial assistance to eligible persons for specified crime-related³² economic losses, including wage loss, certain violence-related relocation costs, funeral expenses, and medical and mental health treatment costs, if such persons are unable to obtain compensation for their losses from any other source.³³ A person is generally eligible³⁴ for VCP funding if he or she is:

- A victim;
- An intervenor;³⁵
- A surviving spouse, parent, guardian, sibling, or child of a deceased victim or intervenor; or
- Any other person who is dependent for his or her principal support upon a deceased victim or intervenor.³⁶

The CCTF is funded by:

- Legislative appropriations to compensate victims; and
- Moneys:
 - Recovered on behalf of DLA by subrogation or other action;
 - Recovered through restitution;
 - Received from the federal government;
 - Received from court costs and fines; or
 - Received from any other public or private source.³⁷

Florida law levies an eight percent service charge on various state trust funds which receive “income of a revenue nature,” including the CCTF.³⁸ These service charges are deposited into the General Revenue Fund³⁹ as a reimbursement of the estimated pro rata share of the “cost of general government” paid from the General Revenue Fund.⁴⁰ For fiscal year 2019-20, the CCTF’s cash balance was the lowest it has been in at least eleven years, due in part to diminishing revenues.⁴¹ DLA estimates that exempting the CCTF from the service charge would increase the CCTF’s balance by about \$1.2 million per year, allowing increased VCP funding.⁴² However, the exemption would also decrease funds deposited into the General Revenue Fund by the same amount.

State Institutions Claims Program

³⁰ See DLA’s Analysis of HB0515, *supra* note 5. .

³¹ S. 960.21, F.S.

³² The crime must have directly resulted in personal injury to, psychiatric or psychological injury to, or the death of the victim or intervenor and have been promptly reported to the proper authorities. S. 960.13, F.S.

³³ Ss. 960.16 and 960.196-199, F.S.; Office of the State Attorney Office of the Attorney General, Bureau of Victim Compensation, *Victims Brochure*, [http://myfloridalegal.com/webfiles.nsf/WF/MRAY-8CVP5T/\\$file/BVCVictimCompensationBrochure.pdf](http://myfloridalegal.com/webfiles.nsf/WF/MRAY-8CVP5T/$file/BVCVictimCompensationBrochure.pdf) (last visited Mar. 1, 2021).

³⁴ A person is ineligible for VCP funds if the person committed or aided in the crime’s commission; was engaged in other unlawful activity at the time of the crime; was in custody or confined in a county or municipal detention facility, a state or federal correctional facility, or a juvenile detention or commitment facility at the time of the crime; has been adjudicated as a habitual felony offender, habitual violent offender, or violent career criminal; or has been adjudicated guilty of any forcible felony offense. S. 960.065(2), F.S.

³⁵ An intervenor is any person who goes to the aid of another and suffers bodily injury or death as a result of acting, not recklessly, to prevent a crime’s commission, to lawfully apprehend a person reasonably suspected of having committed a crime, or to aid a crime victim. S. 960.03(9), F.S.

³⁶ S. 960.065(1), F.S.

³⁷ S. 960.21(2), F.S.

³⁸ S. 215.20(1), F.S.

³⁹ The General Revenue Fund is the state’s primary operating fund, used to fund education, transportation, environmental and natural resources programs, and other state interests. Florida Department of Financial Services, *Florida Financials Glossary of Terms*, <https://fs.fldfs.com/dispub2/glossary.htm> (last visited Mar. 1, 2021).

⁴⁰ S. 215.20(1), F.S.

⁴¹ See DLA’s Analysis of HB0515, *supra* note 5.

⁴² *Id.*

The State Institutions Claims Program (“SICP”) provides restitution⁴³ for property damage and direct medical expenses for injuries caused by shelter or foster children or escapees, inmates, or patients of state institutions or developmental disabilities centers under the Department of Children and Families (“DCF”), the Department of Health (“DOH”), the Department of Juvenile Justice (“DJJ”), the Department of Corrections (“DOC”), or the Agency for Persons with Disabilities (“APD”).⁴⁴ Restitution claims are filed with DLA, which has the power to hear⁴⁵ and investigate claims, determine claim eligibility, and pay eligible claims.⁴⁶ DLA must also work with DCF, DOH, DJJ, DOC, and APD to streamline claim investigations, hearings, and eligibility determinations to ensure that eligible claimants receive timely restitution.⁴⁷ However, DLA receives no funding to pay eligible claims but instead sends those claims to the state agency responsible for payment.⁴⁸

Between FY 2015-16 and FY 2019-20, DLA received a total of 1,600 restitution claims with an average claim value of \$631.95.⁴⁹ Of this total, 1,230 claims, or approximately 77%, were deemed eligible for compensation.⁵⁰ Over the past five state fiscal years, DLA has approved a total of \$755,265.00 worth of restitution claims.⁵¹

If DLA determines that a claim is not eligible, the applicant can submit a notice of rights petition to appeal such decision.⁵² If there is a dispute as to a material issue of fact, the petitioner has a right to a formal hearing under s. 120.57(1), F.S. If there is no dispute as to a material issue of fact, the petitioner has a right to an informal hearing under s. 120.57(2), F.S. Between 2018-19 and 2020-21, eight (8) State Institution claims went through a formalized hearing process.⁵³

Approximately 99% of the restitution claims received by DLA over the past five state fiscal years have come from DCF.⁵⁴ The majority of these claims were for property damage to a caregiver’s home or vehicle caused by foster children.⁵⁵ Common examples include claims for broken or soiled furniture, cracked vehicle or house windows, and damage to walls and/or floors. Over the past five state fiscal years, DLA has approved a total of \$747,758.61 worth of restitution claims submitted by DCF.⁵⁶

Price Gouging

⁴³ Restitution payments are capped at \$1,000, except in the case of foster children and their families, when payments are capped at \$1,500. S. 402.181(2), F.S.

⁴⁴ S. 402.181(1), F.S.

⁴⁵ Hearings are held in accordance with ch. 120, F.S. S. 402.181(3)(a), F.S.

⁴⁶ S. 402.181(2), F.S.

⁴⁷ S. 402.181(3)(b), F.S.

⁴⁸ See DLA’s Analysis of HB0515 , *supra* note 5 at p. 3.

⁴⁹ *Id.* at p.3-5.

⁵⁰ *Id.* at p. 3-4.

⁵¹ *Id.*

⁵² Email from Daniel Olson, Director of Governmental Relations, Office of the Attorney General, FW: Question Re: HB 515 (March 15, 2021).

⁵³ *Id.*

⁵⁴ See DLA’s Analysis of HB0515, *supra* note 5 p. 3-4.

⁵⁵ *Id.* at p. 5.

⁵⁶ *Id.* at p. 3-4.

During a declared state of emergency, it is unlawful⁵⁷ to offer to rent or sell any essential commodity⁵⁸ at an unconscionable price within the area for which the state of emergency is declared.⁵⁹ The price-gouging prohibition is effective for 60 days from the initial declaration and must be renewed by any subsequent emergency declaration renewal.⁶⁰ It is also unlawful for any person to impose unconscionable prices for the rental or lease of any dwelling unit or self-service storage facility during a declared state of emergency.⁶¹ Florida does not set a specific benchmark for what constitutes price gouging, but a price is presumed to be unconscionable if:

- There is a gross disparity between the price charged during the state of emergency and the average price charged during the 30 days before the state of emergency; or
- It grossly exceeds the average price for which the same or similar commodity was readily obtainable in the trade area during the 30 days before the state of emergency declaration.⁶²

However, Florida exempts from the price gouging prohibition a price increase approved by an appropriate government agency or “attributable to additional costs incurred in connection with the rental or sale of the commodity or rental or lease of any dwelling unit or self-storage facility, or regional, national, or international market trends.”⁶³ Further, the price gouging prohibition does not apply to sales by raw or processed food product growers, producers, or processors, except for retail sales of such products directly to the consumer within the area of the declared state of emergency.⁶⁴

Price gouging may be reported to the AG through the AG’s Price Gouging Hotline, through the No Scam app, online, or by mail, and the AG investigates each allegation.⁶⁵ Florida has no private cause of action for price gouging, so cases must be brought by the office of the state attorney or the AG.⁶⁶ Violating the price gouging prohibition carries a civil penalty of up to \$1,000 per violation, or up to \$25,000 per 24-hour period, which must be paid to the enforcing authority.⁶⁷

Convenience Businesses

The Convenience Business Security Act (“CBSA”), meant to prevent violent crimes at late-night convenience businesses,⁶⁸ provides uniform security standards for such businesses.⁶⁹ These standards include the mandatory use of security devices and silent alarms, prohibitions against specified window tinting levels, and the implementation of additional security procedures if a violent crime arising out of the convenience business’ operation has occurred at the business at any time since July 1, 1989.⁷⁰ Additionally, the CBSA requires the owner or operator of a convenience business to provide robbery defense and safety training under an AG-approved curriculum to each retail employee within 60 days of employment and to resubmit the curriculum to the AG for approval biennially.⁷¹

⁵⁷ Price gouging is considered a violation of the Florida Deceptive and Unfair Trade Practices Act under s. 501.204, F.S.

⁵⁸ “Commodity” means any goods, services, materials, merchandise, supplies, equipment, resources, or other article of commerce and includes, without limitation, water, food, ice, chemicals, petroleum products, and lumber necessary for consumption or use as a direct result of the emergency. S. 501.160(1)(a), F.S.

⁵⁹ S. 501.160(2), F.S.

⁶⁰ *Id.*

⁶¹ S. 501.160(3), F.S.

⁶² S. 501.160(1)(b), F.S.

⁶³ S. 501.160(1)(b) and (4), F.S.

⁶⁴ S. 501.160(5), F.S.

⁶⁵ Office of the Attorney General, *Price Gouging Frequently Asked Questions*,

<https://myfloridalegal.com/pages.nsf/Main/5D2710E379EAD6BC85256F03006AA2C5?OpenDocument> (last visited Mar. 1, 2021).

⁶⁶ S. 501.160(7) and (8), F.S.

⁶⁷ S. 501.164, F.S.

⁶⁸ “Convenience business” under the CBSA means any business primarily engaged in the retail sale of groceries, or both groceries and gasoline, that is open for business at any time between 11:00 p.m. and 5:00 a.m. The term does not include a business that is solely or primarily a restaurant, a business that always has at least five employees on the premises after 11:00 p.m. and before 5:00 a.m., a business with at least 10,000 square feet of retail floor space, or any business in which the owner or members of the owner’s family work between 11:00 p.m. and 5:00 a.m. S. 812.171, F.S.

⁶⁹ Ss. 812.172 and 812.173, F.S.

⁷⁰ S. 812.173, F.S.

⁷¹ A proposed curriculum must be submitted to the AG in writing with an administrative fee of no more than \$100. The curriculum must train and familiarize retail employees with security principles, devices, and measures required by the CBSA. S. 812.174, F.S.

The AG trains law enforcement officers and others on inspecting convenience businesses for CBSA violations through the Florida Crime Prevention Training Institute.⁷² A CBSA violation results in a notice of violation from the AG.⁷³ Violators have 30 days from notice receipt to prove CBSA compliance to the AG's office, and if a violation continues after that time, the AG may impose a civil fine of up to \$5,000.⁷⁴ The AG may also petition for an injunction if she determines that public health, safety, or welfare is threatened by a convenience business's continued operation in violation of the CBSA and may seek attorney fees and costs and a civil penalty of up to \$5,000 per violation.⁷⁵ The AG typically receives less than ten complaints each year about non-compliant convenience businesses and can usually bring such businesses into compliance without resorting to enforcement activity or fines.⁷⁶

Under other authority, the Division of Alcoholic Beverages and Tobacco ("ABT") within the Department of Business and Professional Regulation ("DBPR") licenses and regulates the retail sale of alcoholic beverages and tobacco, including sales at convenience stores.⁷⁷ ABT's Bureau of Law Enforcement also inspects retail locations selling alcoholic beverages and tobacco for legal violations.⁷⁸ However, DBPR does not license or regulate convenience store operation.

De-Identified Prescription Drug Monitoring Program Database Patient Information

The Prescription Drug Monitoring Program ("PDMP") database tracks controlled substance⁷⁹ prescriptions written and filled in the state, including opioid prescriptions.⁸⁰ Florida law allows the AG, upon authorization by a trial court, to use de-identified patient information from the PDMP database in an active investigation or pending civil or criminal litigation involving prescribed controlled substances, subject to confidentiality restrictions.⁸¹ The authorization expires by way of a sunset provision on June 30, 2021. However, the AG is currently litigating a civil matter against some of the nation's largest opioid manufacturers and distributors for their role in the opioid crisis ("opioid litigation"), and trial in the matter is set for April of 2022.⁸² Without a sunset provision extension, the AG will not be able to use de-identified patient information from the PDMP database in her opioid litigation.⁸³

Effect of Proposed Changes

Florida Supreme Court Reporter

CS/HB 515 repeals ss. 16.10 and 16.101, F.S., thereby removing the AG from the position of official Florida Supreme Court reporter and deleting the requirement that the Florida Supreme Court Clerk provide the AG with copies of Florida Supreme Court opinion volumes to be kept in the AG's office at

⁷² The Florida Crime Prevention Training Institute, established in 1982 under the Office of the AG, provides statewide public education and training programs for law enforcement personnel, school resource officers, victim advocates, and other interested persons on crime prevention initiatives, school-based officer programs, victim advocacy, and related criminal justice topics. S. 16.54, F.S.; See Office of the Attorney General, *Florida Crime Prevention Training Institute: About Us*, <http://www.fcpti.com/fcpti.nsf/pages/AboutUs> (last visited Mar. 1, 2021); see also email from Daniel Olson, *supra* note 5.

⁷³ S. 812.175(1), F.S.

⁷⁴ CBSA fines are deposited in to the General Revenue Fund. S. 812.175(1) and (2), F.S.

⁷⁵ S. 812.175(3), F.S.

⁷⁶ See DLA's Analysis of HB0515, *supra* note 5.

⁷⁷ Valerie L. Haber, *Alcohol Regulation (FL): Overview*, 19 Practical Law Commercial Transactions (2009), [https://www.gray-robison.com/uploads/files/Alcohol%20Regulation%20\(FL\)%20Overview%20\(w-020-0266\)\(1\).pdf](https://www.gray-robison.com/uploads/files/Alcohol%20Regulation%20(FL)%20Overview%20(w-020-0266)(1).pdf) (last visited Mar. 1, 2021).

⁷⁸ *Id.*

⁷⁹ "Controlled substance" means a controlled substance listed in Schedule II, Schedule III, Schedule IV, or Schedule V of s. 893.03, F.S., or 21 U.S.C. s. 812. S. 893.055(1)(C), F.S.

⁸⁰ S. 893.055, F.S.; Centers for Disease Control and Prevention, *Prescription Drug Monitoring Programs*, <https://www.cdc.gov/drugoverdose/pdmp/states.html> (last visited Mar. 1, 2021).

⁸¹ Ss. 893.055(5)(b)2. and 893.0551, F.S.

⁸² See DLA's Analysis of HB0515, *supra* note 5; Office of the Attorney General, *Combating the National Opioid Crisis*, <http://myfloridalegal.com/pages.nsf/Main/D0263EB06FDFD00F8525828E0064EE0F#:~:text=On%20Tuesday%2C%20May%2015%2C%202018.role%20in%20the%20opioid%20crisis> (last visited Mar. 1, 2021); see Case No. 2018-CA-001438 (Fla. 6th Judicial Circuit).

⁸³ See DLA's Analysis of HB0515.

the capitol. Florida Supreme Court opinions would still be available online and in reporters maintained in the AG's law library.

Safe Neighborhoods Act

The bill repeals sections:

- 163.517, F.S., creating the SNP and allowing a local government to submit an SNP planning grant application to DLA.
- 163.519, F.S., establishing DLA's duties relating to NID funding and SNP operation.
- 163.521, F.S., allowing an NID in an enterprise zone to ask DLA to include provisions to fund capital improvements in its annual budget request and request grant funding.
- 163.5215, F.S., specifying how the provisions of the SNA should be construed.
- 163.522, F.S., directing a local government with a designated enterprise zone or which has authorized a community redevelopment area to consider creating an NID in said zone or area.
- 163.523, F.S., authorizing local governments to seek community organization cooperation and involvement in NID creation and to compensate such organizations.

The bill also deletes provisions requiring NIDs to register with and submit documents to DLA and makes conforming changes. NIDs would still:

- Have to register with and submit requisite documents to DEO.
- Be able to apply for available federal grants.

Crimes Compensation Trust Fund

The bill exempts the CCTF from the eight percent statutory service charge, allowing those funds to remain in the CCTF. However, this exemption would decrease general revenue funds to the same extent.

State Institutions Claims Program

The bill removes DLA as the entity responsible for SICP restitution claims. Under the bill, such claims must instead be filed with and evaluated and paid by the state agency supervising the person responsible for the damage or injury forming the basis of the claim. The bill also authorizes DCF, DOH, DJJ, DOC, and APD to adopt rules to process SICP claims and to ensure that eligible claimants receive timely restitution.

Price Gouging

The bill leaves the renewal of the price gouging prohibitions to the Governor's discretion, allowing the Governor to choose to whether to extend such prohibitions by issuing an executive order. The bill also provides that price gouging for rent of a dwelling unit or self-storage facility is only prohibited if the rental was necessary for habitation or use as a direct result of the declared emergency.

Convenience Businesses

The bill changes the entity responsible for overseeing and enforcing the CBSA from DLA to ABT, and makes the following changes to the CBSA:

- Revises the definition of "convenience business" to specify that the definition includes businesses that are licensed by ABT, pursuant to:
 - Chapter 210, F.S., relating to tobacco products;
 - Chapter 561, F.S., relating to the beverage law;
 - Chapter 562, F.S., relating to the beverage law;

- Chapter 563, F.S., relating to beer and malt beverages;
- Chapter 564, F.S., relating to wine;
- Chapter 565, F.S., relating to liquor; and
- Chapter 569, F.S., relating to tobacco products.
- Revises procedures that a convenience business must follow when a violent crime has occurred by:
 - Requiring the business to notify ABT in writing; and
 - Placing a timeframe within which the written notice and the required security measures must be implemented, to be within 30 days of judicial determination that one or more of the violent crimes occurred.
- Specifies that ABT has the authority to investigate the premises and records of any licensee in order to determine whether the licensee is a convenience business and subject to the provisions of the CBSA.
- Revises the biennial requirement that a convenience business must submit proposed robbery deterrence safety training to ABT for approval, by requiring ABT to establish a specific biennial submittal date by rule.

De-Identified Prescription Drug Monitoring Program Database Patient Information

The bill extends the AG's authority to use de-identified patient information from the PDMP database to June 30, 2023, giving the AG additional time to use such information in her opioid litigation.

The bill provides an effective date of June 30, 2021.

B. SECTION DIRECTORY:

Section 1: Repeals s. 16.10, F.S., relating to receipt of Supreme Court reports for office.

Section 2: Repeals s. 16.101, F.S., relating to Supreme Court reporter.

Section 3: Amends s. 163.503, F.S., relating to definitions.

Section 4: Amends s. 163.504, F.S., relating to safe neighborhood improvement districts; planning funds.

Section 5: Amends s. 163.5055, F.S., relating to registration of district establishment; notice of dissolution.

Section 6: Amends s. 163.506, F.S., relating to local government neighborhood improvement districts; creation; advisory council; dissolution.

Section 7: Amends s. 163.508, F.S., property owners' association neighborhood improvement districts; creation; powers and duties; duration.

Section 8: Amends 163.511, F.S., relating to special neighborhood improvement districts; creation; referendum; board of directors; duration; extension.

Section 9: Repeals s. 163.517, F.S., relating to Safe Neighborhood Program.

Section 10: Repeals s. 163.519, F.S., relating to duties of Department of Legal Affairs.

Section 11: Repeals s. 163.521, F.S., relating to neighborhood improvement district inside enterprise Zone; funding.

Section 12: Repeals s. 163.5215, F.S., relating to effect.

- Section 13: Repeals s. 163.522, F.S., relating to state redevelopment programs.
- Section 14: Repeals s. 163.523, F.S., relating to safe neighborhood districts; cooperation and involvement of community organizations.
- Section 15: Amends s. 163.524, F.S., relating to neighborhood preservation and enhancement program; participation; creation of neighborhood preservation and enhancement districts; creation of neighborhood councils and neighborhood enhancement plans.
- Section 16: Amends s. 215.22, F.S., relating to certain income and certain trust funds exempt.
- Section 17: Amends s. 376.84, F.S., relating to brownfield redevelopment economic incentives.
- Section 18: Amends s. 402.181, F.S., relating to state institutions claims program.
- Section 19: Amends s. 501.160, F.S., relating to rental or sale of essential commodities during a declared state of emergency; prohibition against unconscionable prices.
- Section 20: Amends s. 775.083, F.S., relating to fines.
- Section 21: Amends s. 812.171, F.S., relating to definition.
- Section 22: Amends s. 812.173, F.S., relating to convenience business security.
- Section 23: Amends s. 812.174, F.S., relating to training of employees.
- Section 24: Amends s. 812.175, F.S., relating to enforcement; civil fine.
- Section 25: Amends s. 812.176, F.S., relating to rulemaking authority.
- Section 26: Amends s. 3 of chapter 2019-127, Laws. of Fla.
- Section 27: Amends s. 960.21, F.S., relating to the CCTF.
- Section 28: Provides an effective date of June 30, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

On February 19, 2021, the Revenue Estimating Conference (“REC”) considered section 16 of the bill. The REC determined that exempting the CCTF from the eight percent service charge would result in an increase in funds in the CCTF of approximately \$1.2 million annually for FY 2021-22 through FY 2025-26 but a decrease in funds in the General Revenue Fund by the same amount during the same period.⁸⁴

2. Expenditures:

The bill may have an indeterminate fiscal impact on DBPR as it shifts oversight responsibility for the CSBA from DLA to DBPR. DBPR anticipates the need for 16 additional fulltime Investigative Specialists, three (3) Senior Attorneys, and one (1) Administrative Assistant to perform the increased duties.⁸⁵ DBPR projects that additional staffing will lead to reoccurring costs of

⁸⁴ Revenue Estimating Conference, Revenue Impact Results (Feb. 19, 2021), http://www.edr.state.fl.us/content/conferences/revenueimpact/archives/2021/_pdf/Impact0219.pdf (last visited Mar. 5, 2021).

⁸⁵ Department of Business & Professional Regulation, Analysis of HB0515 at p. 6 (March 11, 2021).

\$1,391,065.00 and nonrecurring costs of 641,563.00.⁸⁶ DBPR also anticipates additional costs associated with reimbursing local governments for enforcement assistance.⁸⁷

The bill may have an indeterminate fiscal impact on APD, DCF, DJJ,DOC, and DOH as it removes DLA from the restitution claims process and requires these agencies to review, process and settle state institution claims filed with them.

DCF:

DCF anticipates the need to hire an additional full time staff member to perform the duties currently being performed by DLA.⁸⁸ DCF projects that additional staffing will lead to recurring costs of \$77,490.92 per year and nonrecurring costs of \$4,448.00.⁸⁹ DCF also anticipates additional costs associated with the promulgation of new rules.⁹⁰ If necessary, DCF indicated that it “will utilize current FTEs and resources to absorb the costs of the program operation.”⁹¹

DOH:

DOH anticipates the need to hire an additional full time employee to perform the duties currently being performed by DLA.⁹² DOH projects that additional staffing will lead to recurring costs of \$74,560.00 per year and nonrecurring costs of \$4,429.00.⁹³

The bill is not expected to result in a material increase in expenditures for APD, DJJ and DOC.⁹⁴

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill would eliminate price gouging protections relating to rent of a dwelling unit or a self-service storage facility during a declared state of emergency, which could subject Florida consumers to higher rent prices during a state of emergency.

The bill requires convenience businesses to provide written notice to ABT when certain violent crimes occur at the convenience business.

D. FISCAL COMMENTS:

None.

⁸⁶ *Id.* at p. 7.

⁸⁷ *Id.*

⁸⁸ Department of Children and Family Services, Analysis of HB0515 at p. 4 (March 8, 2021).

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² Department of Health, Analysis of HB0515 at p. 3 (March 5, 2021).

⁹³ *Id.*

⁹⁴ Agency for Persons with Disabilities, Analysis of HB0515 at p. 3 (February 24, 2021). Department of Juvenile Justice, Analysis of HB0515 at p.4 (February 25, 2021). Email from Scotti P. Vaughan, Deputy Legislative Affairs Director, Florida Department of Corrections, FW: Question RE: HB 515 (March 15, 2021).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill:

- Authorizes DCF, DOH, DJJ, DOC, and APD to adopt rules to process SICIP claims and to ensure that eligible claimants receive restitution within a reasonable time.
- Removes DLA's authority to adopt rules required for SNP operation, the capital improvements provisions, and any other duties assigned under the SNA.
- Authorizes ABT to adopt rules to implement the CBSA.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 1, 2021, the Judiciary Committee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Provided that price gouging for rent of a dwelling unit or self-storage facility during a declared state of emergency is only prohibited if the rental was necessary for inhabitation or use as a direct result of the emergency.
- Made a technical change by deleting a reference to the service charge in the CCTF statute.

On March 9, 2021, the Commerce Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Changes references to the entity responsible for overseeing and enforcing the CBSA from DBPR to ABT.
- Revises the definition of "convenience business" to specify that the definition includes certain alcoholic beverage and tobacco related businesses licensed by ABT.
- Requires a convenience business to provide written notice to ABT and implement the required security measures within 30 days of judicial determination that one or more violent crimes occurred.
- Authorizes ABT to investigate the premises and records of any licensee in order to determine whether the licensee is a convenience business and subject to ABT.
- Requires ABT to establish a specific biennial submittal date by rule.

On March 18, 2021, the Health & Human Services Committee adopted an amendment to the bill. The amendment removes the bill's 60-day limit on the bill authority for gubernatorial extension of prohibitions against unconscionable prices by executive order.

This analysis is drafted to the committee substitute as passed by the Health & Human Services Committee.

