

**SB 596** by **Albritton (CO-INTRODUCERS) Perry**; (Similar to H 00671) Regional Rural Development Grants

**SB 198** by **Berman**; (Identical to H 00445) Trademark Classifications

**SB 962** by **Diaz**; (Similar to H 01161) Malt Beverages

**SB 334** by **Brandes**; (Similar to CS/H 00397) Professional Regulation

131354 A S RCS IT, Brandes Delete L.146 - 152: 03/13 07:10 AM

**SB 536** by **Brandes (CO-INTRODUCERS) Perry**; (Similar to H 00441) 911 Services

184002 A S RCS IT, Brandes btw L.249 - 250: 03/13 12:31 PM

**SB 1000** by **Hutson**; (Similar to H 00693) Communications Services Taxes

591504 A S RCS IT, Hutson Delete L.49 - 299: 03/13 01:49 PM

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

**INNOVATION, INDUSTRY AND TECHNOLOGY**

**Senator Simpson, Chair**

**Senator Benacquisto, Vice Chair**

**MEETING DATE:** Tuesday, March 12, 2019  
**TIME:** 1:30—3:30 p.m.  
**PLACE:** *Toni Jennings Committee Room*, 110 Senate Building

**MEMBERS:** Senator Simpson, Chair; Senator Benacquisto, Vice Chair; Senators Bracy, Bradley, Brandes, Braynon, Farmer, Gibson, Hutson, and Passidomo

TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
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**Senate Confirmation Hearing:** A public hearing will be held for consideration of the below-named executive appointment to the office indicated.

**Secretary of Business and Professional Regulation**

1	Beshears, Halsey (Monticello)	Pleasure of Governor	Recommend Confirm Yeas 8 Nays 0
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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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2	<b>SB 596</b> Albritton (Similar H 671)	Regional Rural Development Grants; Specifying that the concept of building the professional capacity of a regional economic development organization includes the hiring of professional staff to perform specified services; increasing the maximum percentage of total infrastructure project costs for which the department may award a grant; providing that improving access to and availability of broadband Internet service may be included in a project that is eligible for rural infrastructure grant funds, etc.  CM    02/19/2019 Favorable IT    03/12/2019 Favorable AP	Favorable Yeas 9 Nays 0
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3	<b>SB 198</b> Berman (Identical H 445)	Trademark Classifications; Revising classes of goods and services to conform to the classifications adopted by the United States Patent and Trademark Office, etc.  CM    02/19/2019 Favorable IT    03/12/2019 Favorable RC	Favorable Yeas 9 Nays 0
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**COMMITTEE MEETING EXPANDED AGENDA**Innovation, Industry and Technology  
Tuesday, March 12, 2019, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SB 962</b> Diaz (Similar H 1161)	Malt Beverages; Prohibiting sales and purchases of malt beverages on consignment or any basis other than a bona fide sale; authorizing a vendor to request return of undamaged product, damaged product, and out-of-code product to a distributor; specifying that a distributor is not required to accept returns authorized by the act; providing that returns pursuant to the act are not considered gifts, loans, or other forms of financial aid or assistance for purposes of tied house evil, etc.  IT      03/12/2019 Favorable CM RC	Favorable Yeas 9 Nays 0
5	<b>SB 334</b> Brandes (Similar CS/H 397)	Professional Regulation; Requiring certain boards and entities within the Divisions of Certified Public Accounting, Professions, or Real Estate of the Department of Business and Professional Regulation to use a specified process for the review of an applicant's criminal record to determine the applicant's eligibility for certain licenses; prohibiting the conviction, plea, adjudication, or sentencing of a crime before a specified date from being used as grounds for the denial of certain licenses, etc.  IT      03/12/2019 Fav/CS CM AP RC	Fav/CS Yeas 9 Nays 0
6	<b>SB 536</b> Brandes (Similar H 441)	911 Services; Requiring counties to develop a plan for implementing a text-to-911 system and to implement a system to receive E911 text messages by a specified date; requiring that the Technology Program within the Department of Management Services develop and implement a plan to require that emergency dispatchers be able to transfer an emergency call from one E911 system to another E911 system in this state, etc.  IT      03/12/2019 Fav/CS IS AP	Fav/CS Yeas 9 Nays 0
7	<b>SB 1000</b> Hutson (Similar H 693)	Communications Services Taxes; Reducing the communications services tax rate levied on sales of communications services; revising the authority for municipalities and counties to impose permit fees on providers of communications services that use or occupy municipal or county roads or rights-of-way, etc.  IT      03/12/2019 Fav/CS FT AP	Fav/CS Yeas 9 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Innovation, Industry and Technology  
Tuesday, March 12, 2019, 1:30—3:30 p.m.

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

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**RON DESANTIS**  
GOVERNOR

RECEIVED

2019 JAN 11 PM 3:32

STATE OF FLORIDA

January 11, 2019

Secretary Michael Ertel  
Department of State  
R.A. Gray Building, Room 316  
500 South Bronough Street  
Tallahassee, FL 32399-0250

Dear Secretary Ertel:

Please be advised I have made the following appointment under the provision of Section 20.165, Florida Statutes:

Mr. Halsey Beshears  
525 Taylor Road  
Monticello, FL 32732

as the Secretary of the Department of Business and Professional Regulation, subject to confirmation by the Senate. This appointment is effective for a term beginning January 11, 2019 and ending at the pleasure of the Governor.

Sincerely,

Ron DeSantis  
Governor

RD/mm

HAND DELIVERED

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED

2019 JAN 25 PM 4:34

STATE OF FLORIDA

County of JEFFERSON

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

SECRETARY OF OBPR (Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

Signature [Handwritten Signature]

Sworn to and subscribed before me this 23rd day of January 2019

Dixie Irene Parker Signature of Officer Administering Oath or of Notary Public

Dixie Irene Parker Print Name of Notary Public



Personally Known [X] OR Produced Identification [ ]

Type of Identification Produced

ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: [ ] Home [X] Office

P.O. Box 459 Street or Post Office Box Monticello FL 32345 City, State, Zip Code

Haley Beshears Print Name [Handwritten Signature] Signature

125

**STATE OF FLORIDA  
DEPARTMENT OF STATE  
Division of Elections**

I, Jennifer Kennedy, Interim Secretary of State,  
do hereby certify that

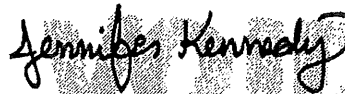
*Halsey Beshears*

is duly appointed

**Secretary,  
Department of Business and Professional  
Regulation**

for a term beginning on the Eleventh day of January, A.D., 2019,  
to serve at the pleasure of the Governor and is subject to be  
confirmed by the Senate during the next regular session of the  
Legislature.

*Given under my hand and the Great Seal of the  
State of Florida, at Tallahassee, the Capital, this  
the Twenty-Ninth day of January, A.D., 2019.*



Interim Secretary of State

If photocopied or chemically altered, the word "VOID" will appear.

"State of Florida" appears in small letters across the face of this 8 1/2 x 11" document.

HAND DELIVERED

RECEIVED

CERTIFICATION

2019 JAN 25 PM 4:34

STATE OF FLORIDA  
COUNTY OF JEFFERSON

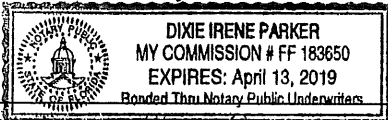
DIVISION OF ELECTIONS  
TALLAHASSEE, FL

Before me, the undersigned Notary Public of Florida, personally appeared Halsey Reshears, who, after being duly sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.

Halsey Reshears  
Signature of Applicant-Affiant

Sworn to and subscribed before me this 25<sup>th</sup> day of January, 2019.

Dixie Irene Parker  
Signature of Notary Public-State of Florida



(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: April 13, 2019

Personally Known  OR Produced Identification

Type of Identification Produced \_\_\_\_\_



(seal)



The Florida Senate  
**Committee Notice Of Hearing**

IN THE FLORIDA SENATE  
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of  
Halsey Beshears  
Secretary of Business and Professional Regulation

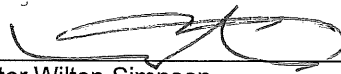
**NOTICE OF HEARING**

TO: Secretary Halsey Beshears

YOU ARE HEREBY NOTIFIED that the Committee on Innovation, Industry, and Technology of the Florida Senate will conduct a hearing on your executive appointment on Tuesday, March 12, 2019, in the Toni Jennings Committee Room, 110 Senate Building, commencing at 1:30 p.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.  
DATED this the 7th day of March, 2019

Committee on Innovation, Industry, and  
Technology



\_\_\_\_\_  
Senator Wilton Simpson  
As Chair and by authority of the committee

cc: Members, Committee on Innovation, Industry, and Technology  
Office of the Sergeant at Arms

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/12/19

Meeting Date

N/A

Bill Number (if applicable)

Topic Senate Confirmation

Amendment Barcode (if applicable)

Name Halsey Beshears

Job Title Secretary - DBPR

Address 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 DBPR

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

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

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

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

THE FLORIDA SENATE

# COMMITTEE WITNESS OATH

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**CHAIR:**

Please raise your right hand and be sworn in as a witness.

Do you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?

**WITNESS'S NAME:** Halsey Beshears

**ANSWER:** I DO

Pursuant to §90.605(1), *Florida Statutes*: "The witness's answer shall be noted in the record."

**COMMITTEE NAME:** Innovation, Industry and Technology

**DATE:** March 12, 2019



**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.)

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Prepared By: The Professional Staff of the Committee on Innovation, Industry, and Technology

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BILL: SB 596

INTRODUCER: Senators Albritton and Perry

SUBJECT: Regional Rural Development Grants

DATE: March 11, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Anderson</u>	<u>McKay</u>	<u>CM</u>	<b>Favorable</b>
2.	<u>Wiehle</u>	<u>Imhof</u>	<u>IT</u>	<b>Favorable</b>
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 596 makes changes to the operation of the Regional Rural Development Grant program and the Rural Infrastructure Fund.

Specifically, the bill amends the Regional Rural Development Grant Program to:

- Increase the maximum annual grant amount to \$250,000 from \$150,000 for any of the three regional economic development organizations serving the entire region of a rural area of opportunity may receive;
- Increase the amount of funds the Department of Economic Opportunity (DEO) may expend for the program (up to \$1 million annually from up to \$750,000 annually);
- Reduce the required match the regional economic development organizations must contribute in non-state resources from 100 percent to 25 percent of the state's contribution; and
- Allow the use of grant funds to build the professional capacity of regional economic development organizations.

The bill amends the Rural Infrastructure Fund program to:

- Increase the grant awards to 50 percent of infrastructure project costs (currently 30 percent);
- Clarify that eligible infrastructure projects include access to broadband Internet service, and projects that improve service and access must be through a partnership that was publicly noticed and competitively bid; and
- Require the DEO to review the grant program application and award procedures by September 1, 2020.

Contracts or agreements for the Regional Rural Development Grant Program or the Rural Infrastructure Fund that expend state grant funds must contain certain specific contract provisions and be posted online.

The bill has no impact on state funds. Under the bill, from the \$1.6 million recurring appropriation to the Rural Community Development Revolving Loan Fund, the DEO may expend up to \$1 million on the Rural Development Grant Program; if the maximum amount is expended on the grant program, then \$600,000 would be available for the loan fund (up to \$250,000 less annually).

The bill takes effect July 1, 2019.

## II. Present Situation:

### Relevant Entities and Rural Areas

#### *Rural Economic Development Initiative*

The primary entity providing support to rural areas is the Rural Economic Development Initiative (REDI) program within the Department of Economic Opportunity (DEO). REDI was established by the Legislature in 1997 to encourage and facilitate the location and expansion of major economic development projects of significant scale in rural communities.<sup>1</sup> It is composed of representatives from specified agencies and organizations.<sup>2</sup> REDI is responsible for coordinating and focusing the efforts and resources of state and regional agencies on the problems that affect the fiscal, economic, and community viability of Florida's economically distressed rural communities. REDI works with local governments, community-based organizations, and private organizations that have an interest in the growth and development of these communities to find ways to balance environmental and growth management issues with local needs.

#### *Rural Areas of Opportunity*

A rural area of opportunity (RAO) is a rural community, or region of rural communities, that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster or that presents a unique economic development opportunity of regional impact.<sup>3</sup> By executive order, the Governor may designate up to three RAOs, establishing each region as a priority assignment for REDI agencies. The Governor can waive the criteria, requirements, or any similar provisions of any state economic development incentive for projects in a RAO.<sup>4</sup>

The currently designated RAOs are:<sup>5</sup>

- Northwestern RAO: Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, and Washington counties, and the City of Freeport in Walton County;
- South Central RAO: DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee counties, and the cities of Pahokee, Belle Glade, South Bay (Palm Beach County), and Immokalee (Collier County); and

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<sup>1</sup> Section 288.0656, F.S.

<sup>2</sup> The agencies and organizations are listed in s. 288.0656(6)(a), F.S.

<sup>3</sup> Section 288.0656(2)(d), F.S.

<sup>4</sup> Section 288.0656(7), F.S.

<sup>5</sup> Department of Economic Opportunity, *Rural Areas of Opportunity*, available at <http://www.floridajobs.org/community-planning-and-development/rural-community-programs/rural-areas-of-opportunity> (last visited February 18, 2019).

- North Central RAO: Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union counties.

### ***Regional Economic Development Organizations***

A regional economic development organization is a public/private 501(c)(6) organization that provides economic development support to the local governments that represent the RAOs. There are three regional economic development organizations, each operating within one of the current RAOs:

- Opportunity Florida serves the Northwestern RAO;<sup>6</sup>
- Florida's Heartland Regional Economic Development Initiative, Inc., serves the South Central RAO;<sup>7</sup> and
- The North Florida Economic Development Partnership serves the North Central RAO.<sup>8</sup>

### **Regional Rural Development Grant Program<sup>9, 10</sup>**

The Regional Rural Development Grant Program was established to provide funding, through matching grants, to build the professional capacity of regional economic development organizations in Florida. Additionally, grants from the program may be used by an economic development organization to provide technical assistance to businesses within the rural counties and communities that the organization serves.

To be approved, an applying organization must provide proof to the DEO of:

- The organization's need for the assistance;
- The official commitments of support from all the local governments represented by the organization;
- Financial or in-kind commitments to the organization by each local government and the private sector;
- The organization's existence and active involvement in economic development activities in the region; and
- The manner in which the organization coordinates its efforts with those of other local and state organizations.

The maximum amount any organization may receive is \$50,000, or \$150,000 in a rural area of opportunity, and the grant must be matched by an equivalent amount of non-state resources. Because the Governor can waive criteria, requirements, or any similar provisions of any state economic development incentive in RAOs, the matching requirement is likely eligible to be waived.<sup>11</sup> The DEO may expend up to \$750,000 each fiscal year from funds appropriated to the Rural Community Development Revolving Loan Fund for the program.

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<sup>6</sup> See generally, Opportunity Florida, available at <http://www.opportunityflorida.com/> (last visited March 8, 2019).

<sup>7</sup> See generally, Florida's Heartland Regional Economic Development Initiative, Inc., available at <http://flaheartland.com/> (last visited March 8, 2019).

<sup>8</sup> See generally, North Florida Economic Development Partnership, available at <http://nflp.org/> (last visited March 8, 2019).

<sup>9</sup> Section 288.018, F.S.

<sup>10</sup> Enterprise Florida, Inc., (EFI), the principal economic development organization for the state, contracts with DEO to manage the Regional Rural Development Grant Program. Enterprise Florida, *About EFI*, available at <https://www.enterpriseflorida.com/about-efi/> (last visited March 8, 2019).

<sup>11</sup> Section 288.0656(7) and 288.018(1), F.S.

## Rural Infrastructure Fund<sup>12</sup>

The Rural Infrastructure Fund was created to facilitate the planning, preparing, and financing of tourism infrastructure and economic development projects that encourage job growth and capital investment in rural communities. DEO administers the fund and awards grants that maximize the use of federal, local, and private resources.

DEO awards three grants this fund: the total project participation grant, the infrastructure feasibility grant, and the preclearance review grant.<sup>13</sup>

The total project participation grant allows for awards of up to 30 percent of the total infrastructure project cost for projects related to access to federal funds, and up to 40 percent if the project is an RAO catalyst site.<sup>14</sup> Eligible projects must be related to specific job creation or retention opportunities, and may include improving certain inadequate infrastructure that is prohibiting economic or community growth or reducing costs to community users of proposed infrastructure improvements that exceed costs in comparable communities. Infrastructure can include public or public-private partnership facilities, like storm water systems, roads, nature-based tourism facilities, and broadband facilities.

The infrastructure feasibility grant provides awards of up to 30 percent of the total project costs for infrastructure feasibility studies, design and engineering activities, or other infrastructure planning and preparation activities.<sup>15</sup> Maximum awards are dependent on the number of jobs that a business commits to create and may be up to \$300,000 if the project is located in an RAO. The total project participation grant and infrastructure feasibility grant may be used together.

The preclearance review grant provides awards to help a local government participate in expedited permitting processes through technical assistance in preparing permit applications and local comprehensive plan amendments.<sup>16</sup> Grants may be used for surveys, feasibility studies, and other activities related to the identification and preclearance review of land use modifications. Grants are limited to \$75,000 (or \$300,000 for a project in an RAO) and must be matched 50 percent with local funds (or 33 percent for a project in an RAO, or waived for a project in a catalyst site).

The DEO reviews and certifies the grant applications in consultation with Enterprise Florida, Inc., the Florida Tourism Industry Marketing Corporation (VISIT FLORIDA), the Department of Environmental Protection, and the Florida Fish and Wildlife Conservation Commission, as appropriate.

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<sup>12</sup> Section 288.0655, F.S.

<sup>13</sup> Department of Economic Opportunity, *Rural Infrastructure Fund*, available at <http://www.floridajobs.org/community-planning-and-development/rural-community-programs/rural-infrastructure-fund> (last visited March 8, 2019).

<sup>14</sup> Section 288.0655(2)(b), F.S. A “catalyst site” is “a parcel or parcels of land within a rural area of opportunity that has been prioritized as a geographic site for economic development through partnerships with state, regional, and local organizations. The site must be reviewed by REDI and approved by the department for the purposes of locating a catalyst project.” Section 288.0656(2)(b), F.S.

<sup>15</sup> Section 288.0655(2)(c), F.S.

<sup>16</sup> Section 288.0655(2)(e), F.S. Expedited permitting is pursuant to s. 403.973(18), F.S.



In Fiscal Year 2018-2019, the funding appropriated for the Rural Infrastructure Fund was \$2.7 million.<sup>17</sup>

### III. Effect of Proposed Changes:

#### **Regional Rural Development Grant Program**

**Section 1** amends the Regional Rural Development Grants Program in s. 288.018, F.S., to clarify how regional economic development organizations may build their professional capacity, revise and increase the grant amount for certain organizations in RAOs, and specify certain contract requirements. It also defines a “regional economic development organization” to mean an economic development organization that is located in a rural area of opportunity, as defined in s. 288.0656, F.S.

The bill clarifies that “building the professional capacity” of a regional economic development organization includes hiring professional staff to develop, facilitate, and provide economic development professional services. Economic development services include technical assistance, education and leadership development, and marketing and project recruitment. Under the bill, grant funds may be used for these purposes.

Currently, grant funds may be used to provide technical assistance to businesses within the area that the regional economic development organization services. The bill expands the use of the grant funds to allow technical assistance to be provided to local governments, local economic development organizations, and existing and prospective businesses.

The bill increases the maximum grant amount from \$150,000 to \$250,000 for each of the three regional economic development organizations recognized by the DEO (Opportunity Florida, Florida Heartland Regional Economic Region of Opportunity, and the North Florida Economic Development Partnership). Regional economic development organizations not located in an RAO would still be eligible for a \$50,000 grant, and regional economic development organizations in an RAO would still be eligible for a \$150,000 grant.

The bill reduces the required match for a grant under this program to 25 percent of the state contribution, instead of the current requirement of a 100 percent match (one-to-one match).

The bill increases the amount that the DEO may expend each fiscal year on the program from up to \$750,000 to up to \$1 million. These funds are from the funds appropriated to the Rural Community Development Revolving Loan Fund.

#### **Rural Infrastructure Fund**

**Section 2** amends the total project participation grant of the Rural Infrastructure Fund program in s. 288.0655, F.S., to increase the amount of the total infrastructure project costs that grant funds can be used for from 30 percent to 50 percent. Accordingly, the bill eliminates the existing provision for an award of up to 40 percent of total infrastructure project costs if the project is an RAO catalyst site.

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<sup>17</sup> Specific appropriation 2245, ch. 2018-09, Laws of Fla.

The bill includes the costs associated with improving access to and the availability of broadband internet service to the types of projects that are eligible for a grant. It also designates “improvements to broadband Internet service and access in unserved or underserved rural communities” as an eligible use of funds. Such eligible use must be conducted through a partnership or partnerships with one or more dealers of communications services,<sup>18</sup> and the partnership must be established by a publicly noticed and competitively selected process.

The bill requires the DEO, in consultation with Enterprise Florida, Inc., VISIT FLORIDA, the Department of Environmental Protection, and the Florida Fish and Wildlife Conservation Commission, to review and edit any guidelines or criteria for grant applications by September 1, 2020.

### **Contracts or Agreements Under the Regional Rural Development Grant Program and the Rural Infrastructure Fund**

**Sections 1 and 2** establish identical contract requirements relating to the Regional Rural Development Grant Program and the Rural Infrastructure Fund, respectively.

The bill requires the contract or agreement to be posted on the website for either the contracting regional economic development organization or the DEO for at least 14 days before execution.

A contract or agreement to expend grant funds must include:

- The purpose of the contract or agreement;
- Specific performance standards and responsibilities of all involved parties;
- A detailed budget, if applicable;
- The value of services provided; and
- Estimated travel and entertainment expenses of board members and staff, if applicable.

The bill requires specific contracts or agreements that exceed \$35,000 or that expend grant funds to be posted on the website for the contracting regional economic development organization or the DEO in a “plain language version.” This applies to a contract or agreement with a private entity, a municipality, a vendor of services, supplies, or programs (including marketing), or a contract or agreement for the purchase, lease, or use of lands, facilities, or properties.

### **Effective Date**

The bill takes effect July 1, 2019.

## **IV. Constitutional Issues:**

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

None.

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<sup>18</sup> A “dealer of communications services” is defined as a person registered with the Department of Revenue as a provider of communications services in this state. *See* s. 202.11, 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.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill requires 25 percent of all disbursed Regional Rural Development Grant funds to be matched annually by a nonstate source, a reduction from the current 100 percent (one-to-one) match.

C. Government Sector Impact:

The Rural Community Development Revolving Loan Fund receives a recurring appropriation of \$1.6 million, of which up to \$750,000 is statutorily distributed to the Regional Rural Development Grant program. The bill increases the maximum grant amount that three regional economic development organizations that serve the entire region of a RAO may receive, from \$150,000 to \$250,000 annually.

The bill increases the amount that the DEO may expend each fiscal year on the program from up to \$750,000 to up to \$1 million. These funds are from the funds appropriated to the Rural Community Development Revolving Loan Fund. From the \$1.6 million recurring appropriation to the Rural Community Development Revolving Loan Fund, if the DEO expends the maximum amount on the Rural Development Grant Program (up to \$1 million annually), then at least \$600,000 would be available for the loan fund (up to \$250,000 less annually).

The Rural Infrastructure Fund receives a recurring appropriation of \$1.6 million. Specific inclusion of certain broadband Internet infrastructure projects as eligible for the total project participation grant may increase competition for grant funds in the Rural Infrastructure Fund. Additionally, the bill increases the amount of total infrastructure project costs for which grant funds may be used to 50 percent from the current 30 percent

(or 40 percent if the project is at a catalyst site in a RAO). This change may lead to fewer grants awarded.

The cost to post contracts and “plain language” versions of contracts online is unknown. SB 596 is largely similar to SB 1646 filed in 2018, and at that time, DEO indicated that SB 1646 would have no impact on state expenditures.<sup>19</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 288.018 and 288.0655.

**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.

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

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<sup>19</sup> DEO, *2018 Agency Legislative Bill Analysis: SB 1646*, January 22, 2018.



The Florida Senate

## Committee Agenda Request

**To:** Senator Wilton Simpson, Chair  
Committee on Innovation, Industry, and Technology

**Subject:** Committee Agenda Request

**Date:** February 22, 2019

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I respectfully request that **Senate Bill #596**, relating to Regional Rural Development Grants, be placed on the:

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

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Senator Ben Albritton  
Florida Senate, District 26

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

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

3-12-19

Meeting Date

596

Bill Number (if applicable)

Topic RURAL GRANT

Amendment Barcode (if applicable)

Name LAURA YOUMANS

Job Title LEGISLATIVE COUNSEL

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

City

State

Zip

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)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-12-19

Meeting Date

596

Bill Number (if applicable)

Topic Regional Rural Grants

Amendment Barcode (if applicable)

Name Chris Doolin

Job Title Consultant

Address 1118-B THOMASVILLE ROAD

Phone 850-508-5492

Street

Tallahassee, Fla. 32303

Email cdoolin@metally.com

City

State

Zip

Speaking: [ ] For [ ] Against [ ] Information

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

Representing SMALL COUNTY COALITION

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

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

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

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

S-001 (10/14/14)

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

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

3/12/19

*Meeting Date*

596

*Bill Number (if applicable)*

Topic Regional Rural Development Grants

*Amendment Barcode (if applicable)*

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St

Phone 224-7173

*Street*

Tallahassee

FL

32301

Email bbevis@aif.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Associated Industries of 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**  
**APPEARANCE RECORD**

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

3/12/19

Meeting Date

596

Bill Number (if applicable)

Topic Regional Rural Dev.

Amendment Barcode (if applicable)

Name Christopher Emmanuel

Job Title Policy Director

Address 136 S Bronough St

Phone \_\_\_\_\_

Street

TLH  
City

FL  
State

32301  
Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Florida Chamber of Commerce

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)

3/

SB 596

Meeting Date

Bill Number (if applicable)

Topic ~~AMERICAN~~ Rural Regional Development

Amendment Barcode (if applicable)

Name Jeff Hendry HENDRY

Job Title Executive Director

Address Street

Phone (850)443-7103

City

State

Zip

Email

Speaking:  For  Against  Information

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

Representing North Florida Economic Development Partnership

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

03.12.19

SB 596

Meeting Date

Bill Number (if applicable)

Topic Regional Rural Development Grants

Amendment Barcode (if applicable)

Name Roy Baker

Job Title Business Development Coordinator

Address 4636 Highway 90, Suite K

Phone 850-633-4119

Street

Marianna

FL

32446

Email royb@opportunityflorida.com

City

State

Zip

Speaking: [ ] For [ ] Against [ ] Information

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

Representing Opportunity Florida

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

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

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/12/19 Meeting Date

596 Bill Number (if applicable)

Topic Regional Rural Development Grants

Amendment Barcode (if applicable)

Name Phillip Suderman

Job Title Policy Director

Address 200 W. College Ave Street

Phone

Tallahassee FL 32301 City State Zip

Email

Speaking: For Against Information

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

Representing Americans for Prosperity

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/12/19  
Meeting Date

596  
Bill Number (if applicable)

Topic Regional Rural Development Grants

Amendment Barcode (if applicable)

Name Jim Spratt

Job Title

Address 310 W College Ave.

Phone 850 228 1296

Street

TALCAHASSEE FL 32301

Email jim.megall@state.fl.us

City

State

Zip

Speaking:  For  Against  Information

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

Representing Okeechobee County

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.



By Senator Albritton

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1                                   A bill to be entitled  
2           An act relating to regional rural development grants;  
3           amending s. 288.018, F.S.; defining the term "regional  
4           economic development organization"; specifying that  
5           the concept of building the professional capacity of a  
6           regional economic development organization includes  
7           the hiring of professional staff to perform specified  
8           services; providing that matching grants may be used  
9           to provide technical assistance to local governments  
10          and economic development organizations and to existing  
11          and prospective businesses; specifying that a regional  
12          economic development organization that provides  
13          taxpayer-funded incentives is not eligible to  
14          participate in the matching grant program; increasing  
15          the maximum amount of annual grant funding that  
16          specified economic development organizations may  
17          receive; revising the required amount of nonstate  
18          matching funds; requiring that certain information be  
19          included in a contract or agreement involving the  
20          expenditure of grant funds; requiring that contracts  
21          or agreements involving the expenditure of grant  
22          funds, and a plain-language version of certain  
23          contracts or agreements, be placed on the contracting  
24          regional economic development organization's website  
25          for a specified period before execution; deleting an  
26          obsolete provision; increasing the amount of funds the  
27          Department of Economic Opportunity may expend each  
28          fiscal year for certain purposes; amending s.  
29          288.0655, F.S.; increasing the maximum percentage of

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30 total infrastructure project costs for which the  
31 department may award a grant; deleting a provision  
32 authorizing a higher maximum percentage of total  
33 infrastructure project costs for a catalyst site;  
34 providing that improving access to and availability of  
35 broadband Internet service may be included in a  
36 project that is eligible for rural infrastructure  
37 grant funds; requiring that improvements to broadband  
38 Internet service and access be made through certain  
39 partnerships, which must be established through a  
40 competitive selection process; extending the date by  
41 which the department is required to reevaluate certain  
42 guidelines and criteria; requiring that certain  
43 information be included in a contract or agreement  
44 involving the expenditure of grant funds; requiring  
45 that contracts or agreements involving the expenditure  
46 of grant funds, and a plain-language version of  
47 certain contracts or agreements, be placed on the  
48 contracting regional economic development  
49 organization's website for a specified period before  
50 execution; providing an effective date.

51  
52 Be It Enacted by the Legislature of the State of Florida:

53  
54 Section 1. Subsections (1), (3), and (4) of section  
55 288.018, Florida Statutes, are amended to read:

56 288.018 Regional Rural Development Grants Program.—

57 (1) (a) For the purposes of this section, a "regional  
58 economic development organization" means an economic development



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59 organization located in a rural area of opportunity, as defined  
60 in s. 288.0656.

61 (b) The department shall establish a matching grant program  
62 to provide funding to regional ~~regionally based~~ economic  
63 development organizations representing rural counties and  
64 communities to build ~~for the purpose of building~~ the  
65 professional capacity of those ~~their~~ organizations. Efforts to  
66 build the professional capacity of regional economic development  
67 organizations include the hiring of professional staff to  
68 develop, facilitate the delivery of, and directly provide needed  
69 economic development professional services, including technical  
70 assistance, education and leadership development, marketing, and  
71 project recruitment. ~~Such~~ Matching grants may also be used by a  
72 regional ~~an~~ economic development organization to provide  
73 technical assistance to local governments, local economic  
74 development organizations, and existing and prospective  
75 businesses within the rural counties and communities that it  
76 serves. A regional economic development organization that  
77 provides taxpayer-funded incentives to existing or prospective  
78 businesses is not eligible to participate in the matching grant  
79 program.

80 (c) A regional economic development organization may apply  
81 annually to the department for a matching grant. The department  
82 is authorized to approve an application for a grant of: ~~on an~~  
83 annual basis, grants

84 1. Up to \$150,000 to an organization located ~~to such~~  
85 ~~regionally based economic development organizations. The maximum~~  
86 ~~amount an organization may receive in any year will be \$50,000,~~  
87 ~~or \$150,000~~ in a rural area of opportunity designated pursuant

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88 to s. 288.0656(7).

89 2. Up to \$250,000 to any of the three regional economic  
90 development organizations that serve an entire region of a rural  
91 area of opportunity designated pursuant to s. 288.0656(7) and  
92 that are recognized by the department as serving such a region.

93 (d) Grant funds received by a regional economic development  
94 organization recommended by the Rural Economic Development  
95 Initiative and designated by the Governor, and must be matched  
96 each year by an equivalent amount of nonstate resources in an  
97 amount equal to 25 percent of the state contribution.

98 (3) (a) A contract or agreement that involves the  
99 expenditure of grant funds provided under this section,  
100 including a contract or agreement entered into between another  
101 entity and a regional economic development organization, a unit  
102 of local government, or an economic development organization  
103 substantially underwritten by a unit of local government, must  
104 include:

105 1. The purpose of the contract or agreement.

106 2. Specific performance standards and responsibilities for  
107 each entity.

108 3. A detailed project or contract budget, if applicable.

109 4. The value of any services provided.

110 5. The projected travel and entertainment expenses for  
111 employees and board members, if applicable.

112 (b) At least 14 days before execution, the contracting  
113 regional economic development organization shall post on its  
114 website:

115 1. Any contract or agreement that involves the expenditure  
116 of grant funds provided under this section.

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117        2. A plain-language version of a contract or agreement with  
118 a private entity, a municipality, or a vendor of services,  
119 supplies, or programs, including marketing, or for the purchase  
120 or lease or use of lands, facilities, or properties which  
121 involves the expenditure of grant funds provided under this  
122 section and which is estimated to exceed \$35,000 ~~The department~~  
123 ~~may also contract for the development of an enterprise zone web~~  
124 ~~portal or websites for each enterprise zone which will be used~~  
125 ~~to market the program for job creation in disadvantaged urban~~  
126 ~~and rural enterprise zones. Each enterprise zone web page should~~  
127 ~~include downloadable links to state forms and information, as~~  
128 ~~well as local message boards that help businesses and residents~~  
129 ~~receive information concerning zone boundaries, job openings,~~  
130 ~~zone programs, and neighborhood improvement activities.~~

131        (4) The department may expend up to \$1 million ~~\$750,000~~  
132 each fiscal year from funds appropriated to the Rural Community  
133 Development Revolving Loan Fund for the purposes outlined in  
134 this section. The department may contract with Enterprise  
135 Florida, Inc., for the administration of the purposes specified  
136 in this section. Funds released to Enterprise Florida, Inc., for  
137 this purpose shall be released quarterly and shall be calculated  
138 based on the applications in process.

139        Section 2. Present subsection (5) of section 288.0655,  
140 Florida Statutes, is redesignated as subsection (6), paragraph  
141 (b) of subsection (2) and subsection (4) of that section are  
142 amended, and a new subsection (5) is added to that section, to  
143 read:

144        288.0655 Rural Infrastructure Fund.—

145        (2) (b) To facilitate access of rural communities and rural

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146 areas of opportunity as defined by the Rural Economic  
147 Development Initiative to infrastructure funding programs of the  
148 Federal Government, such as those offered by the United States  
149 Department of Agriculture and the United States Department of  
150 Commerce, and state programs, including those offered by Rural  
151 Economic Development Initiative agencies, and to facilitate  
152 local government or private infrastructure funding efforts, the  
153 department may award grants for up to 50 ~~30~~ percent of the total  
154 infrastructure project cost. ~~If an application for funding is~~  
155 ~~for a catalyst site, as defined in s. 288.0656, the department~~  
156 ~~may award grants for up to 40 percent of the total~~  
157 ~~infrastructure project cost.~~ Eligible projects must be related  
158 to specific job-creation or job-retention opportunities.  
159 Eligible projects may also include improving any inadequate  
160 infrastructure that has resulted in regulatory action that  
161 prohibits economic or community growth or reducing the costs to  
162 community users of proposed infrastructure improvements that  
163 exceed such costs in comparable communities, including the costs  
164 associated with improving access to and the availability of  
165 broadband Internet service. Eligible uses of funds shall include  
166 improvements to public infrastructure for industrial or  
167 commercial sites, ~~and~~ upgrades to or development of public  
168 tourism infrastructure, and improvements to broadband Internet  
169 service and access in unserved or underserved rural communities.  
170 Improvements to broadband Internet service and access must be  
171 made in partnership with one or more dealers of communications  
172 services as defined in s. 202.11(2), and any such partnership  
173 must be established by a publicly noticed competitive selection  
174 process. Authorized infrastructure may include the following

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175 public or public-private partnership facilities: storm water  
176 systems; telecommunications facilities; broadband facilities;  
177 roads or other remedies to transportation impediments; nature-  
178 based tourism facilities; or other physical requirements  
179 necessary to facilitate tourism, trade, and economic development  
180 activities in the community. Authorized infrastructure may also  
181 include publicly or privately owned self-powered nature-based  
182 tourism facilities, publicly owned telecommunications  
183 facilities, and broadband facilities, and additions to the  
184 distribution facilities of the existing natural gas utility as  
185 defined in s. 366.04(3)(c), the existing electric utility as  
186 defined in s. 366.02, or the existing water or wastewater  
187 utility as defined in s. 367.021(12), or any other existing  
188 water or wastewater facility, which owns a gas or electric  
189 distribution system or a water or wastewater system in this  
190 state where:

191 1. A contribution-in-aid of construction is required to  
192 serve public or public-private partnership facilities under the  
193 tariffs of any natural gas, electric, water, or wastewater  
194 utility as defined herein; and

195 2. Such utilities as defined herein are willing and able to  
196 provide such service.

197 (4) By September 1, 2020 ~~2012~~, the department shall, in  
198 consultation with the organizations listed in subsection (3),  
199 and other organizations, reevaluate existing guidelines and  
200 criteria governing submission of applications for funding,  
201 review and evaluation of such applications, and approval of  
202 funding under this section. The department shall consider  
203 factors including, but not limited to, the project's potential

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204 for enhanced job creation or increased capital investment, the  
205 demonstration and level of local public and private commitment,  
206 whether the project is located ~~in an enterprise zone,~~ in a  
207 community development corporation service area~~,~~ or in an urban  
208 high-crime area as designated under s. 212.097, the unemployment  
209 rate of the county in which the project would be located, and  
210 the poverty rate of the community.

211 (5) (a) A contract or agreement that includes the  
212 expenditure of grant funds provided under this section,  
213 including a contract or agreement entered into between an entity  
214 and a regional economic development organization, a unit of  
215 local government, or an economic development organization  
216 substantially underwritten by a unit of local government, must  
217 include:

- 218 1. The purpose of the contract or agreement.
- 219 2. Specific performance standards and responsibilities for  
220 each entity.
- 221 3. A detailed project or contract budget, if applicable.
- 222 4. The value of any services provided.
- 223 5. The projected travel and entertainment expenses for  
224 employees and board members, if applicable.

225 (b) At least 14 days before execution, the contracting  
226 regional economic development organization shall post on its  
227 website:

- 228 1. Any contract or agreement that involves the expenditure  
229 of grant funds provided under this section.
- 230 2. A plain-language version of a contract or agreement with  
231 a private entity, a municipality, or a vendor of services,  
232 supplies, or programs, including marketing, or for the purchase

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233 or lease or use of lands, facilities, or properties which  
234 involves the expenditure of grant funds provided under this  
235 section and which is estimated to exceed \$35,000.

236 Section 3. This act shall take effect July 1, 2019.

**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.)

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Prepared By: The Professional Staff of the Committee on Innovation, Industry, and Technology

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BILL: SB 198

INTRODUCER: Senator Berman

SUBJECT: Trademark Classifications

DATE: March 12, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<b>Favorable</b>
2.	<u>Kraemer</u>	<u>Imhof</u>	<u>IT</u>	<b>Favorable</b>
3.	_____	_____	<u>RC</u>	_____

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## I. Summary:

SB 198 updates Florida’s trademark and service mark classifications of goods and services for purposes of registration under Florida’s trademark law.

In order to register a trademark or service mark (mark) in Florida, a person must submit an application to the Florida Department of State (DOS) that contains, among other requirements, a sample of the good or service for which the mark is sought and the statutory class in which the good or service falls.<sup>1</sup> Both the federal and Florida laws that outline classifications of goods and services are based on the Nice International Classification of Goods and Services (Nice Classification), as administered by the World Intellectual Property Organization (WIPO). The bill conforms Florida’s statutory classes of goods and services for marks to the Nice Classification, 11th edition, version 2018.

The bill takes effect on July 1, 2019.

## II. Present Situation:

A registered mark distinguishes a good or service as unique, indicates its source, and provides rights to its owner to protect it from duplication and dilution by another person or entity. A trademark (signified by “TM”) protects a good while a service mark (signified by “SM”) protects a service.<sup>2</sup> An owner may register his or her mark with both federal and state regulators (a federally registered mark may bear the ® symbol) but is not required to do so.<sup>3</sup> In fact, an owner

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<sup>1</sup> Section 495.031(1)(b), F.S.

<sup>2</sup> Sections 495.011(11) and (13), F.S. *See also*, U.S. Patent and Trademark Office (U.S.P.T.O.), *Protecting Your Trademark, Enhancing Your Rights Through Federal Registration*, 2 (Sept. 2018), available at <https://www.uspto.gov/sites/default/files/documents/BasicFacts.pdf> (last visited Feb. 20, 2019).

<sup>3</sup> U.S.P.T.O., *supra* note 2, at 10-11; International Trademark Association, *State Trademark Registration in the United States* (July 2014), <https://www.inta.org/TrademarkBasics/FactSheets/Pages/StateTrademarkRegistrationsUSFactSheet.aspx> (last



of an unregistered mark may still enforce his or her rights under certain laws because trademark rights arise from use—not registration. However, an owner of a registered mark benefits from additional protections under state or federal law.

### **Federal and International Classification of Goods and Services**

The U.S. Patent and Trademark Office (U.S.P.T.O.) regulates interstate use of marks pursuant to the Lanham Act.<sup>4</sup> The U.S. is a party to the Nice Agreement, and all applications filed under the Lanham Act after September 1, 1973, are subject to the Nice Classification.<sup>5,6</sup> The Nice Agreement is a multilateral treaty, administered by the WIPO, which establishes the Nice Classification for the purposes of registering trademarks and service marks.<sup>7</sup>

The Nice Classification is reviewed and revised by its Committee of Experts, which is made up of representatives of each party to the Nice Agreement. In 2013, the Committee of Experts began annual revisions to the Nice Classification. The annual revisions enter into force on January 1 each year and are referred to as versions that are identified by edition number and year of the effective date (e.g., “Nice Classification, 10<sup>th</sup> edition, version 2013”).<sup>8</sup> The changes consist of the addition and deletion of new or obsolete goods and services from the Nice Classification’s class headings, alphabetical list of named goods and services, and explanatory notes, as well as any other required amendments. New editions are published every 5 years and adopt the cumulative changes of the prior versions.<sup>9</sup>

Effective January 1, 2019, the federal classifications of goods and services were updated to reflect the Nice Classification, 11<sup>th</sup> edition, version 2019.<sup>10</sup>

### **Florida Trademark Law and Classification of Goods and Services**

Chapter 495, F.S., “Registration and Protection of Trademarks,” governs the intrastate use of marks in Florida. Pursuant to ch. 495, F.S., the DOS’s Division of Corporations (division) registers marks that are in use in Florida.<sup>11</sup> As of July 11, 2018, there were 14,242 active

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visited Feb. 20, 2019); Florida Bar, *Consumer Pamphlet: Intellectual Property* (last updated Jan. 2019), available at <https://www.floridabar.org/public/consumer/pamphlet021/> (last visited Feb. 20, 2019).

<sup>4</sup> 15 U.S.C. s.1051, *et seq.* (2002).

<sup>5</sup> See 37 CFR 2.85(a).

<sup>6</sup> World Intellectual Property Organization, *WIPO-Administered Treaties, Contracting Parties to the Nice Agreement*, [https://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty\\_id=12](https://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=12) (last visited Feb. 20, 2019).

<sup>7</sup> World Intellectual Property Organization, *Summary of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks*, [https://www.wipo.int/treaties/en/classification/nice/summary\\_nice.html](https://www.wipo.int/treaties/en/classification/nice/summary_nice.html) (last visited Feb. 20, 2019).

<sup>8</sup> World Intellectual Property Organization, *FAQ: What is the difference between versions and editions of the NCL?*, <https://www.wipo.int/classifications/nice/en/faq.html> (last visited Feb. 20, 2019).

<sup>9</sup> World Intellectual Property Organization, *FAQ: Is it Updated?*, <https://www.wipo.int/classifications/nice/en/faq.html> (last visited Feb. 20, 2019).

<sup>10</sup> U.S. Patent and Trade Office, *International Trademark Classification Changes*, 83 Fed. Reg. 62711 (Dec. 6, 2018) (codified at 37 CFR Part 6).

<sup>11</sup> See, Florida Department of State Division of Corporations, *Florida Trademark – Service Mark Registration and Use* (2013), available at [http://form.sunbiz.org/pdf/Chapter\\_495\\_Booklet.pdf](http://form.sunbiz.org/pdf/Chapter_495_Booklet.pdf) (last visited Feb. 20, 2019).

registered marks, 1,552 of which were registered in 2017.<sup>12</sup> A registration lasts for five years, and may be renewed for successive five-year terms.<sup>13</sup> The division assesses a registration fee of \$87.50 per classification, and any mark may be registered under multiple classifications.<sup>14</sup>

An application for registration of a mark must:<sup>15</sup>

- Provide the applicant's name, address, and if applicable, place of incorporation;
- Explain the goods or services for which the mark will be used, and how the mark will be affixed to, or used in connection therewith;
- Identify the statutory class (*see* s. 495.111, F.S.) to which the good or service to be marked belongs;
- Detail the history of the mark's use, especially in Florida; and
- State that the applicant owns the mark, that the mark is in current use, and that no other entity or person has registered or has a right to use the mark in Florida.

There are currently 34 classifications of goods and 11 classifications of services in Florida law.<sup>16</sup>

### III. Effect of Proposed Changes:

SB 198 conforms Florida's classifications for trademark goods and services to the 2018 version of the 11<sup>th</sup> edition of the Nice Classification.

The bill provides an effective date of July 1, 2019.

### 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.

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<sup>12</sup> Florida Department of State, *Yearly Statistics From 2011 to Present*, <https://dos.myflorida.com/sunbiz/about-us/yearly-statistics/> (last visited Feb. 20, 2019).

<sup>13</sup> Section 495.071, F.S.

<sup>14</sup> Florida Dep't of State, *Trademark/Service Mark Registration Guidelines* (Jan. 2011), <http://form.sunbiz.org/pdf/cr2e014.pdf> (last visited Feb. 20, 2019).

<sup>15</sup> Section 495.031(1), F.S.

<sup>16</sup> Section 495.111, F.S.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Florida's classifications of goods and services for the purpose of registering a state mark will more closely match the federal classifications of goods and services. This may reduce confusion for those who register their marks at both the state and federal levels.

C. Government Sector Impact:

The DOS may incur costs relating to updating mark registration applications and related forms.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 495.111 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.



The Florida Senate

## Committee Agenda Request

**To:** Senator Wilton Simpson, Chair  
Committee on Innovation, Industry, and Technology

**Subject:** Committee Agenda Request

**Date:** February 19, 2019

---

I respectfully request that **Senate Bill #198**, relating to Trademark Classifications, be placed on the:

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

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

Senator Lori Berman  
Florida Senate, District 31

Cc: Senator Lizbeth Benacquisto, Vice Chair  
Booter Imhof, Staff Director

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/12/19

Meeting Date

SB 198

Bill Number (if applicable)

Topic Trademark classifications

Amendment Barcode (if applicable)

Name Aimee Diaz Lyon

Job Title

Address 119 South Monroe Street, Suite 2000

Phone 850-205-9000

Street

Tallahassee FL 32301

Email aimee.diazlyon@mhdfirm.com

City

State

Zip

Speaking: For [checked] Against [ ] Information [ ]

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

Representing The Business Law Section of the Florida Bar

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

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

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

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

S-001 (10/14/14)

**The Florida Senate  
COMMITTEE VOTE RECORD**

**COMMITTEE:** Innovation, Industry, and Technology  
**ITEM:** SB 198  
**FINAL ACTION:** Favorable  
**MEETING DATE:** Tuesday, March 12, 2019  
**TIME:** 1:30—3:30 p.m.  
**PLACE:** 110 Senate Building

FINAL VOTE		SENATORS	3/12/2019 Motion to vote "YEA" after Roll Call					
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
		Bracy						
VA		Bradley						
X		Brandes						
X		Braynon						
X		Farmer						
X		Gibson						
X		Hutson						
X		Passidomo						
X		Benacquisto, VICE CHAIR						
X		Simpson, CHAIR						
9	0		FAV	-				
Yea	Nay	<b>TOTALS</b>	Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable      RCS=Replaced by Committee Substitute      TP=Temporarily Postponed      WD=Withdrawn  
 UNF=Unfavorable      RE=Replaced by Engrossed Amendment      VA=Vote After Roll Call      OO=Out of Order  
 -R=Reconsidered      RS=Replaced by Substitute Amendment      VC=Vote Change After Roll Call      AV=Abstain from Voting

By Senator Berman

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1                                   A bill to be entitled  
 2           An act relating to trademark classifications; amending  
 3           s. 495.111, F.S.; revising classes of goods and  
 4           services to conform to the classifications adopted by  
 5           the United States Patent and Trademark Office;  
 6           providing an effective date.

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

9  
 10           Section 1. Paragraphs (a) and (b) of subsection (1) of  
 11           section 495.111, Florida Statutes, are amended to read:

12           495.111 Classification.—

13           (1) The following general classes of goods and services,  
 14           conforming to the classification adopted by the United States  
 15           Patent and Trademark Office, are established for convenience of  
 16           administration of this chapter:

17           (a) Goods:

18           1. Class 1 Chemicals for use ~~used~~ in industry, science, and  
 19           photography, as well as in ~~in~~ agriculture, horticulture, and  
 20           forestry; unprocessed artificial resins, unprocessed plastics;  
 21           ~~manures~~; fire extinguishing and fire prevention compositions;  
 22           tempering and soldering preparations; substances for tanning  
 23           animal skins and hides ~~chemical substances for preserving~~  
 24           ~~foodstuffs; tanning substances; and adhesives~~ for use ~~used~~ in  
 25           industry; putties and other paste fillers; compost, manures,  
 26           fertilizers; biological preparations for use in industry and  
 27           science.

28           2. Class 2 Paints, varnishes, lacquers; preservatives  
 29           against rust and against deterioration of wood; colorants, and

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30 dyes; inks for printing, marking and engraving mordants; raw  
31 natural resins; and metals in foil and powder form for use in  
32 painting, decorating, printing and art painters, decorators,  
33 printers, and artists.

34 3. Class 3 Non-medicated cosmetics and toiletry  
35 preparations; non-medicated dentifrices; perfumery, essential  
36 oils; bleaching preparations and other substances for laundry  
37 use; cleaning, polishing, scouring, and abrasive preparations;  
38 soaps; perfumery, essential oils, cosmetics, and hair lotions;  
39 and dentifrices.

40 4. Class 4 Industrial oils and greases, wax; lubricants;  
41 dust absorbing, wetting, and binding compositions; fuels  
42 ~~(including motor spirit)~~ and illuminants; ~~and~~ candles and wicks  
43 for lighting.

44 5. Class 5 Pharmaceuticals, medical and veterinary  
45 preparations; sanitary preparations for medical purposes;  
46 dietetic food and substances adapted for medical or veterinary  
47 use, and food for babies; dietary supplements for humans and  
48 animals; plasters, and materials for dressings; material for  
49 stopping teeth, and dental wax; disinfectants; preparations for  
50 destroying vermin; and fungicides, and herbicides.

51 6. Class 6 Common metals and their alloys, ores; metal  
52 ~~building~~ materials for building and construction; transportable  
53 buildings of metal; ~~materials of metal for railway tracks; non-~~  
54 electric nonelectric cables and wires of common metal;  
55 ~~ironmongery and~~ small items of metal hardware; metal containers  
56 for storage or transport; safes pipes and tubes of metal; safes;  
57 ~~goods of common metal not included in other classes; and ores.~~

58 7. Class 7 Machines, ~~and~~ machine tools, power-operated



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59 tools; motors and engines, ~~(except for land vehicles)~~; machine  
60 coupling and transmission components, ~~(except for land~~  
61 ~~vehicles)~~; agricultural implements, other than hand-operated  
62 hand tools; incubators for eggs; automatic vending machines.

63 8. Class 8 Hand tools and ~~hand-operated~~ implements, hand-  
64 operated; cutlery; side arms, except firearms; ~~and~~ razors.

65 9. Class 9 Scientific, nautical, surveying, photographic,  
66 cinematographic, optical, weighing, measuring, signaling,  
67 checking (supervision), ~~and~~ life-saving and teaching apparatus  
68 and instruments; apparatus and instruments for conducting,  
69 switching, transforming, accumulating, regulating ~~or~~  
70 controlling electricity; apparatus for recording, transmission ~~or~~  
71 or reproduction of sound or images; magnetic data carriers, and  
72 recording discs; compact discs, DVDs and other digital recording  
73 media; ~~automatic vending machines and~~ mechanisms for coin-  
74 operated apparatus; cash registers, calculating machines, ~~and~~  
75 data processing equipment, and computers; computer software; ~~and~~  
76 fire-extinguishing apparatus.

77 10. Class 10 Surgical, medical, dental ~~and~~ veterinary  
78 apparatus and instruments; artificial limbs, eyes, and teeth;  
79 orthopaedic orthopedic articles; ~~and~~ suture materials;  
80 therapeutic and assistive devices adapted for the disabled;  
81 massage apparatus; apparatus, devices and articles for nursing  
82 infants; sexual activity apparatus, devices and articles.

83 11. Class 11 Apparatus for lighting, heating, steam  
84 generating, cooking, refrigerating, drying, ventilating, water  
85 supply ~~and~~ sanitary purposes.

86 12. Class 12 Vehicles; apparatus for locomotion by land,  
87 air ~~or~~ water.

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88 13. Class 13 Firearms; ammunition and projectiles;  
89 explosives; ~~and~~ fireworks.

90 14. Class 14 Precious metals and their alloys ~~and goods in~~  
91 ~~precious metals or coated therewith (not included in other~~  
92 ~~classes);~~ jewellery, jewelry ~~and~~ precious and semi-precious  
93 ~~stones; and~~ horological and chronometric instruments.

94 15. Class 15 Musical instruments.

95 16. Class 16 Paper and ~~cardboard, and goods made from~~  
96 ~~these materials (not included in other classes);~~ printed matter;  
97 bookbinding material; photographs; stationery and office  
98 requisites, except furniture; adhesives for stationery or  
99 household purposes; drawing materials and materials for artists;  
100 paintbrushes; instructional and teaching materials; plastic  
101 sheets, films and bags for wrapping and packaging artists'  
102 ~~materials; paint brushes; typewriters and office requisites~~  
103 ~~(except furniture); instructional and teaching material (except~~  
104 ~~apparatus); plastic materials for packaging (not included in~~  
105 ~~other classes);~~ printers' type, ~~and~~ printing blocks.

106 17. Class 17 Unprocessed and semi-processed rubber, gutta-  
107 percha, gum, asbestos, mica ~~and~~ substitutes for all these  
108 materials ~~goods made from these materials and not included in~~  
109 ~~other classes;~~ plastics and resins in extruded form for use in  
110 manufacture; packing, stopping ~~and~~ insulating materials; ~~and~~  
111 flexible pipes, tubes and hoses, not of metal.

112 18. Class 18 Leather and imitations of leather ~~and goods~~  
113 ~~made of these materials and not included in other classes;~~  
114 animal skins and hides; luggage and carrying bags ~~trunks and~~  
115 ~~traveling bags;~~ umbrellas and ~~parasols;~~ ~~and~~ walking sticks;  
116 ~~and~~ whips, harness ~~and~~ saddlery; collars, leashes and clothing

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117 for animals.

118 19. Class 19 Building materials (non-metallic ~~nonmetallic~~);  
119 non-metallic ~~nonmetallic~~ rigid pipes for building; asphalt,  
120 pitch, and bitumen; non-metallic ~~nonmetallic~~ transportable  
121 buildings; monuments, not of metal.

122 20. Class 20 Furniture, mirrors, ~~and~~ picture frames;  
123 containers, not of metal, for storage or transport; unworked or  
124 semi-worked bone, horn, whalebone or mother-of-pearl; shells;  
125 meerschaum; yellow amber goods ~~(not included in other classes)~~  
126 ~~of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone,~~  
127 ~~shell, amber, mother of pearl, and meerschaum and substitutes~~  
128 ~~for all these materials, or of plastics.~~

129 21. Class 21 Household or kitchen utensils and containers;  
130 cookware and tableware, except forks, knives and spoons ~~(not of~~  
131 ~~precious metal or coated therewith); combs and sponges; brushes,~~  
132 ~~(except paintbrushes ~~paint brushes~~); brush-making materials;~~  
133 articles for cleaning purposes; ~~steel wool;~~ unworked or semi-  
134 worked ~~semiworked~~ glass, ~~(except building glass used in~~  
135 ~~building); and glassware, porcelain, and earthenware not~~  
136 ~~included in other classes.~~

137 22. Class 22 Ropes and string; nets; tents, and  
138 tarpaulins; awnings of textile or synthetic materials;  
139 ~~tarpaulins,~~ sails; sacks for the transport and storage of  
140 materials in bulk, ~~and bags~~ ~~(not included in other classes);~~  
141 padding, cushioning and stuffing materials, ~~(except of paper,~~  
142 cardboard, rubber or plastics); ~~and~~ raw fibrous textile  
143 materials and substitutes therefor.

144 23. Class 23 Yarns and threads, for textile use.

145 24. Class 24 Textiles and substitutes for textiles;

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146 household linen; curtains of textile or plastic ~~textile goods~~  
147 ~~not included in other classes and bed and table covers.~~

148 25. Class 25 Clothing, footwear, ~~and~~ headgear.

149 26. Class 26 Lace and embroidery, ribbons ~~and~~ braid;  
150 buttons, hooks and eyes, pins ~~and~~ needles; ~~and~~ artificial  
151 flowers; hair decorations; false hair.

152 27. Class 27 Carpets, rugs, mats and matting, linoleum ~~and~~  
153 other materials for covering existing floors; ~~and~~ wall hangings  
154 (non-textile nontextile).

155 28. Class 28 Games, toys and playthings; video game  
156 apparatus; gymnastic and sporting articles ~~not included in other~~  
157 ~~classes~~; ~~and~~ decorations for Christmas trees.

158 29. Class 29 Meat, fish, poultry ~~and~~ game; meat extracts;  
159 preserved, frozen, dried ~~and~~ cooked fruits and vegetables;  
160 jellies, jams, ~~and~~ compotes; eggs~~;~~ milk ~~and~~ milk products; ~~and~~  
161 ~~edible~~ oils and fats for food.

162 30. Class 30 Coffee, tea, cocoa ~~and~~ artificial coffee;  
163 ~~sugar~~, rice~~;~~ tapioca ~~and~~ sago ~~and~~ ~~artificial coffee~~; flour  
164 and preparations made from cereals~~;~~ bread, pastries ~~pastry~~ and  
165 confectionery; edible, ~~and~~ ices; sugar, honey, ~~and~~ treacle;  
166 yeast, baking-powder ~~baking powder~~; salt~~;~~ ~~and~~ mustard; vinegar,  
167 ~~and~~ sauces (condiments); spices; ~~and~~ ice (frozen water).

168 31. Class 31 Raw and unprocessed agricultural,  
169 aquacultural, horticultural ~~and~~ forestry products; raw and  
170 unprocessed grains and seeds ~~and grains not included in other~~  
171 ~~classes~~; ~~live animals~~; fresh fruits and vegetables, fresh herbs;  
172 ~~seeds~~, natural plants ~~and~~ flowers; bulbs, seedlings and seeds  
173 for planting; live animals; foodstuffs and beverages for  
174 animals; ~~and~~ malt.

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175           32. Class 32 Beers; mineral and aerated waters and other  
 176 non-alcoholic beverages ~~nonalcoholic drinks~~; fruit beverages  
 177 ~~drinks~~ and fruit juices; ~~and~~ syrups and other preparations for  
 178 making beverages.

179           33. Class 33 Alcoholic beverages (except beers).

180           34. Class 34 Tobacco; smokers' articles; ~~and~~ matches.

181           (b) Services:

182           1. Class 35 Advertising; business management; business  
 183 administration; ~~and~~ office functions.

184           2. Class 36 Insurance; financial affairs; monetary affairs;  
 185 ~~and~~ real estate affairs.

186           3. Class 37 Building construction; repair; ~~and~~ installation  
 187 services.

188           4. Class 38 Telecommunications.

189           5. Class 39 Transport; packaging and storage of goods; ~~and~~  
 190 travel arrangement ~~arrangements~~.

191           6. Class 40 Treatment of materials.

192           7. Class 41 Education; providing of training;  
 193 entertainment; ~~and~~ sporting and cultural activities.

194           8. Class 42 Scientific and technological services and  
 195 research and design relating thereto; industrial analysis and  
 196 research services; design and development of computer hardware  
 197 and software; ~~and legal services~~.

198           9. Class 43 Services for providing food and drink; ~~and~~  
 199 temporary accommodation.

200           10. Class 44 Medical services; veterinary services;  
 201 hygienic and beauty care for human beings or animals; ~~and~~  
 202 agriculture, horticulture, ~~and~~ forestry services.

203           11. Class 45 Legal services; security services for the

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204 physical protection of tangible property and individuals;  
205 personal and social services rendered by others to meet the  
206 needs of individuals; ~~and security services for the protection~~  
207 ~~of property and individuals.~~

208 Section 2. This act shall take effect July 1, 2019.

**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.)

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Prepared By: The Professional Staff of the Committee on Innovation, Industry, and Technology

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BILL: SB 962

INTRODUCER: Senator Diaz

SUBJECT: Malt Beverages

DATE: March 12, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	IT	<b>Favorable</b>
2.			CM	
3.			RC	

---

**I. Summary:**

SB 962 provides a process for returns of malt beverages by a vendor to a distributor for an exchange of product, a refund, or a credit. A vendor may return malt beverages to a distributor if the malt beverages are a “damaged product,” an “out-of-code” product,” or an “undamaged product.” An “out-of-code product” is a malt beverage that has exceeded the manufacturer’s code date indicating the product’s freshness and availability for purchase at retail. A distributor is not required to accept a return request.

The bill prohibits the sale of malt beverages on consignment or on any basis other than a bona fide sale. A product may not be returned because it is overstocked or slow-moving or because there is only limited or seasonal demand for the product.

Under the bill, a vendor may request return of undamaged product to a distributor only for exchange of product or for credit. Returns of damaged and undamaged products must be made within seven days after the delivery date. Damaged product maybe returned for an exchange of product or a credit. The bill specifies the circumstances in which damaged or undamaged malt beverages may be returned if requested by the vendor.

Under the bill, an out-of-code product may be returned to a distributor only for an exchange of product at any time if the conditions in the bill are satisfied, e.g., the manufacturer’s code date is printed on the product container or, in the case of a keg, marked on a cap, collar, tag, or label affixed to the keg.

The bill requires a malt beverage distributor to keep a written record of each return of malt beverages.

The bill provides an effective date of July 1, 2019.

## II. Present Situation:

In Florida, alcoholic beverages are regulated by the Beverage Law,<sup>1</sup> which regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.<sup>2</sup> The Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation administers and enforces the Beverage Law.<sup>3</sup>

“Alcoholic beverages” are defined in s. 561.01, F.S., as “distilled spirits and all beverages containing one-half of one percent or more alcohol by volume.” “Malt beverages” are brewed alcoholic beverages containing malt.<sup>4</sup>

Section 561.14, F.S., specifies the license and registration classifications used in the Beverage Law.

- “Manufacturers” are those “licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors and to no one else within the state, unless authorized by statute.”<sup>5</sup>
- “Distributors” are those “licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages.”<sup>6</sup>
- “Importers” are those licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else in this state; provided that ss. 564.045 and 565.095, F.S., relating to primary American source of supply licensure, are in no way violated by such imports.<sup>7</sup>
- “Vendors” are those “licensed to sell alcoholic beverages at retail only” and who may not “purchase or acquire in any manner for the purpose of resale any alcoholic beverages from any person not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law.”<sup>8</sup>

### Three-Tier System

In the United States, the regulation of alcohol since the repeal of Prohibition has traditionally been based upon a “three-tier system.” The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverages, and the distributor obtains the beverages from the manufacturer to deliver to the vendor. The vendor makes the ultimate sale to the consumer.<sup>9</sup> A manufacturer, distributor, or exporter may not be licensed as a vendor to sell directly to consumers.<sup>10</sup>

---

<sup>1</sup> Section 561.01(6), F.S., provides that the “The Beverage Law” means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

<sup>2</sup> See s. 561.14, F.S.

<sup>3</sup> Section 561.02, F.S.

<sup>4</sup> Section 563.01, F.S.

<sup>5</sup> Section 561.14(1), F.S.

<sup>6</sup> Section 561.14(2), F.S.

<sup>7</sup> Section 561.01(5), F.S.

<sup>8</sup> Section 561.14(3), F.S.

<sup>9</sup> Section 561.14, F.S.

<sup>10</sup> Section 561.22(1), F.S.



Generally, in Florida, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.<sup>11</sup> Licensed manufacturers, distributors, and registered exporters are prohibited from also being licensed as vendors.<sup>12</sup> Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.<sup>13</sup>

### **Tied House Evil Prohibitions**

States have enacted statutes designed to prevent or limit the control of retail alcoholic beverage vendors by manufacturers, wholesalers, and importers, or to prohibit "tied-house arrangements." Such legislation is referred to as "tied house" or "tied house evil" statutes.<sup>14</sup>

Section 561.42, F.S., Florida's "tied house evil" statute, regulates the permitted and prohibited relationships and interactions of manufacturers and distributors with vendors in order to prevent a manufacturer or distributor from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor, and to prevent a manufacturer or distributor from giving a vendor gifts, loans or property, or rebates.<sup>15</sup> The prohibitions also apply to an importer, primary American source of supply registrant,<sup>16</sup> brand owner or registrant, broker, and sales agent (or sales person thereof).

The tied house evil statute also prohibits any distributor or vendor from receiving any financial incentives from any manufacturer. It further prohibits manufacturers or distributors from assisting retail vendors by gifts or loans of money or property or by the giving of rebates. These prohibitions do not, however, apply to any bottles, barrels, or other containers necessary for the legitimate transportation of such beverages, to advertising materials, or to the extension of credit for liquors sold, if made strictly in compliance with the provisions of s. 561.42, F.S.<sup>17</sup>

Section 561.42, F.S., also prohibits licensed manufacturers and distributors from:

- Making further sales to vendors that the division has certified as not having fully paid for all liquors previously purchased;<sup>18</sup>
- Directly or indirectly giving, lending, renting, selling, or in any other manner furnishing to a vendor any outside sign, printed, painted, electric, or otherwise;<sup>19</sup>
- Providing neon or electric signs, window painting and decalcomanias, posters, placards, and other advertising material herein authorized to be used or displayed by the vendor in the interior of the licensed premises;<sup>20</sup> and
- Providing expendable retail advertising specialties, unless sold to the vendor at not less than the actual cost to the industry member who initially purchased them.<sup>21</sup>

<sup>11</sup> Section 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.

<sup>12</sup> Section 561.22, F.S.

<sup>13</sup> Sections 563.022(14) and 561.14(1), F.S.

<sup>14</sup> 45 AM. JUR. 2d *Intoxicating Liquors*, s. 94 (2017).

<sup>15</sup> Section 561.42(1), F.S.

<sup>16</sup> See s. 564.045, F.S.

<sup>17</sup> Section 564.42(1). Section 561.42(2), F.S., permits distributors to extend credit for the sale of liquors to any vendor up to, but not including, the 10th day after the calendar week within which such sale was made.

<sup>18</sup> Section 561.42(4), F.S.

<sup>19</sup> Section 561.42(10), F.S.

<sup>20</sup> Section 561.42(12), F.S.

<sup>21</sup> Section 561.42(14)(a), F.S.

Section 561.42(14), F.S., further prohibits industry members from providing expendable retail advertising specialties, unless sold to the vendor at not less than the actual cost to the industry member who initially purchased them. A member of the malt beverage industry may provide a vendor with expendable retailer advertising specialties such as trays, coasters, mats, menu cards, napkins, cups, glasses, thermometers, and the like. The industry member must sell these items to a vendor only at a price not less than the actual cost to the industry member who initially purchased the items, without limitation in total dollar value of such items sold to a vendor. Industry members may not engage in cooperative advertising with a vendor.<sup>22</sup>

### **Division Rules - Returns of Products**

Florida law does not address the return of products to distributors by vendors. The division has adopted rules to provide guidance to the industry.

#### ***Return of Damaged Products***

Products are damaged if they exhibit product deterioration, leaking containers, damaged labels, or missing or mutilated tamper-evident closures.<sup>23</sup>

Under the division's rule, a vendor must request for return of damaged products within 15 days after delivery and may receive an exchange of product, cash, or a credit. A vendor may not return products damaged by the vendor or vendor's customers.<sup>24</sup> A distributor is required to make and keep a record of all exchanges of damaged products for product, cash, or credit.<sup>25</sup> Under current law, each manufacturer, distributor, broker, agent, and importer licensed under the Beverage Law is required to maintain and keep, for a period of three years at the licensed place of business, such records of alcoholic beverages received, sold, or delivered within or without this state as may be required by the division.<sup>26</sup>

If the vendor requests a return 15 or more days after delivery, a return may only be for exchange, cash, or credit, under the following circumstances:

- A manufacturer has issued a product recall that affects multiple unaffiliated vendors; or
- A product has deteriorated due to manufacturing or packaging problems.

#### ***Return of Undamaged Products***

A vendor must request for return of undamaged products within 10 days after delivery and may receive cash or a credit within 10 days of the request.<sup>27</sup> A distributor is required to make and keep a record of all undamaged products returned for cash or credit (not an exchange).<sup>28</sup>

If the vendor requests a return 10 or more days after delivery, a return may only be:

- For cash or credit, if the products may no longer be lawfully sold due to a change of law;

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<sup>22</sup> Section 561.42(14)(e), F.S.

<sup>23</sup> Fla. Admin. Code R. 61A-1.0107(1) (2018)

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

<sup>25</sup> Fla. Admin. Code R. 61A-1.0107(2) (2018)

<sup>26</sup> Section 561.55(3)(a), F.S.

<sup>27</sup> Fla. Admin. Code R. 61A-1.0108(1) (2018)

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

- For cash or credit, if the vendor's business is terminated. This does not include a temporary seasonal shutdown;
- For an equal exchange of product, if there is a change in product, such as a change in formula, proof, label, or container;
- For cash or credit, if the product is discontinued; or
- For cash or credit, if a vendor, who is only open for a portion of the year, has product remaining at closure that will spoil in the off-season.<sup>29</sup>

### III. Effect of Proposed Changes:

The bill creates s. 563.061, F.S., to provide a process for returns of malt beverages by a vendor to a distributor for exchange of product, refund, or credit. A vendor may return malt beverages to a distributor if the malt beverages are a "damaged product," an "out-of-code" product," or an "undamaged product."

#### Definitions

The bill defines a "damaged product" to mean

Malt beverages, whether sold in individual containers or kegs, which, upon delivery to a vendor, exhibit product deterioration, defective seals, leaking, damaged labels, or missing or mutilated tamper-evident closures.

A "manufacturer's code date" is defined to mean:

A coded best-by date, expiration date, or other designated date or dating system established by a manufacturer to signify the freshness of its malt beverages and which is printed on the malt beverage container or, in the case of a keg, marked on a cap, collar, tag, or label affixed to the keg.

An "out-of-code product" is defined to mean:

Malt beverages, whether sold in individual containers or kegs, which have exceeded the manufacturer's code date and which, according to the manufacturer's policies, must be removed and replaced with fresh products to ensure that only fresh malt beverages are available for purchase at retail.

An "undamaged product" is defined as those products that are not a "damaged product" or an "out-of-code product."

#### Prohibitions

The bill prohibits the sale of malt beverages on consignment or on any basis other than a bona fide sale. A return of malt beverages to a distributor is only allowed for the ordinary and usual commercial reasons authorized by the bill. A product may not be returned because it is overstocked or slow-moving or because there is only limited or seasonal demand for the product.

---

<sup>29</sup> Fla. Admin. Code R. 61A-1.0108(2) (2018)

### **Returns of Undamaged Product**

Under the bill, a vendor may request return of undamaged product to a distributor only for exchange of product or for credit. A distributor may not accept a return of undamaged product unless the return is requested within 7 days after the delivery date. However, a distributor may accept a return of undamaged product for:

- Credit or refund, if there is a change in regulation or administrative procedure over which the vendor or its employees or agents have no control, e.g., a change in authorized container sizes;
- Credit or refund, if a vendor terminates operations (a vendor's temporary seasonal shutdown is not a termination of operation) and requests return of any remaining products on hand;
- Exchange of product, if a vendor requests return of a product for purposes of quality control or freshness, and the product has not yet exceeded the manufacturer's code date;
- Exchange of product or credit, if a manufacturer has issued a product recall that affects multiple vendors who are not affiliated with one another through having common ownership, through being members of the same pool buying group, or through being members of the same advertising cooperative;
- Credit or refund, if a vendor requests a return because the production or importation of a product is discontinued; or
- Credit or refund, if a vendor who is open for a portion of the year has product remaining at closure which, with respect to quality control or freshness, would become unsuitable for sale during the off-season, according to the manufacturer's code date.

### **Returns of Damaged Products**

The bill permits a vendor to request return of damaged product to a distributor, if:

- The return is for exchange of product or for a credit;
- The vendor makes the request within seven days after the delivery date;
- The distributor verifies that the product is damaged before accepting the return; and
- The product was not damaged by the vendor or its customers.

### **Returns of Out-of-Code Product**

The bill permits a vendor to return out-of-code product to a distributor only for an exchange of product. The distributor must first verify that the product is an out-of-code product. A distributor may accept out-of-code product at any time, if:

- The manufacturer has written policies and procedures that specify the date that product should be removed;
- The manufacturer's policies and procedures are readily verifiable and consistently followed by the manufacturer; and
- The manufacturer's code date is printed on the product container or, in the case of a keg, marked on a cap, collar, tag, or label affixed to the keg.

The bill and current law do not require malt beverages manufacturers to maintain readily verifiable and consistently followed written policies regarding the date malt beverages products should be removed.

Out-of-code product returned to a distributor may not reenter the retail market.

### **Exchanges of Product**

The bill requires that an exchange of product must be in exact quantities with product of near or equal value made by the same manufacturer and in the same size individual container or keg. If a credit is permitted, the credit must be issued at the time of the return with supporting documentation.

### **Distributor Requirements**

Under the bill, a distributor is not required to accept returns of product. If a distributor accepts a return of product, the distributor must:

- Provide the exchange of product, the credit, or the refund to the vendor, as authorized under the bill, at the same time the distributor picks up the product being returned; and
- Pick up damaged or undamaged products being returned within 14 days after receipt of the vendor's request.

### **Recordkeeping Requirement**

The bill requires a distributor to keep and maintain a transaction record of each return for 3 years. The distributor must provide a copy of the transaction record to the vendor in a format accessible by and legible to the vendor.

### **Other Provisions**

The bill provides that bona fide returns for exchange of product, credit, or refund are not considered gifts, loans, or other forms of financial aid or assistance as prohibited by s. 561.42, F.S.

As provided in s. 561.29, F.S., the bill requires the division to impose a civil penalty of \$1,000 per violation against a distributor or vendor who violates s. 563.061, F.S., or any rule adopted under this section.

The bill also authorizes the division to adopt rules to administer and enforce s. 563.061, F.S.

### **Effective Date**

The bill provides an effective date of July 1, 2019.

## **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 563.061 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.

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

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The Florida Senate

## Committee Agenda Request

**To:** Senator Wilton Simpson, Chair  
Committee on Innovation, Industry, and Technology

**Subject:** Committee Agenda Request

**Date:** February 19, 2019

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I respectfully request that **Senate Bill # 962**, relating to Malt Beverages, be placed on the:

- Committee agenda at your earliest possible convenience.
- Next committee agenda.

A handwritten signature in black ink, appearing to read "Manny Diaz, Jr.", written over a horizontal line.

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)

03-12-19  
Meeting Date

962  
Bill Number (if applicable)

Topic Malt Beverages

Amendment Barcode (if applicable)

Name Scott Dick

Job Title Lobbyist

Address 210 S. Monroe St.

Phone 850 421-9100

1 Allamore FL 32301  
City State Zip

Email scott@skdsrp.com

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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/12/2019

Meeting Date

962

Bill Number (if applicable)

Topic Malt Beverages

Amendment Barcode (if applicable)

Name Eli Nortelus

Job Title lobbyist

Address 210 South Monroe

Phone (810) 459-6506

Tallahassee, FL 32301

Email eli@nortelus.com

City State Zip

Speaking: [ ] For [ ] Against [ ] Information

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

Representing F.I.S.A. Florida Independent Spirit Ass.

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.

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

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

3/12/19  
Meeting Date

SB 962  
Bill Number (if applicable)

Topic Beverage Law

Amendment Barcode (if applicable)

Name Jonathan Rees

Job Title State Director, Government Affairs

Address 204 South Monroe St.

Phone (850) 578-0043

Tallahassee FL 32301  
City State Zip

Email Jonathan.Rees@anheuser-busch.com

Speaking:  For  Against  Information

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

Representing Anheuser-Busch

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/12/19

Meeting Date

962

Bill Number (if applicable)

SB 962

Topic malt beverages

Amendment Barcode (if applicable)

Name Katia Saint Fleur

Job Title Contract Lobbyist

Address 9314 NW 2nd Ave

Phone 4044518922

Street

Miami FL

City

State

Zip

Email Katia@kstrandass.com

Speaking:  For  Against  Information

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

Representing Florida Beer Wholesalers Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

Mar. 12, 2019  
Meeting Date

962  
Bill Number (if applicable)

Topic Malt Beverages

Amendment Barcode (if applicable)

Name Grace Lovett

Job Title VP Legislative Affairs

Address 227 S. Adams Street  
Street

Phone 850 222 4082

Tallahassee FL 32301  
City State Zip

Email grace@frf.org

Speaking:  For  Against  Information

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

Representing FL Retail Federation

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

# THE FLORIDA SENATE APPEARANCE RECORD

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

3/12/19

*Meeting Date*

962

*Bill Number (if applicable)*

Topic Malt Beverages

*Amendment Barcode (if applicable)*

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St

Phone 224-7173

*Street*

Tallahassee

FL

32301

Email bbevis@aif.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Associated Industries of 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.**

The Florida Senate  
**COMMITTEE VOTE RECORD**

**COMMITTEE:** Innovation, Industry, and Technology  
**ITEM:** SB 962  
**FINAL ACTION:** Favorable  
**MEETING DATE:** Tuesday, March 12, 2019  
**TIME:** 1:30—3:30 p.m.  
**PLACE:** 110 Senate Building

FINAL VOTE		SENATORS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
		Bracy						
X		Bradley						
X		Brandes						
X		Braynon						
X		Farmer						
X		Gibson						
X		Hutson						
X		Passidomo						
X		Benacquisto, VICE CHAIR						
X		Simpson, CHAIR						
9	0	<b>TOTALS</b>						
<b>Yea</b>	<b>Nay</b>		<b>Yea</b>	<b>Nay</b>	<b>Yea</b>	<b>Nay</b>	<b>Yea</b>	<b>Nay</b>

CODES: FAV=Favorable      RCS=Replaced by Committee Substitute      TP=Temporarily Postponed      WD=Withdrawn  
 UNF=Unfavorable      RE=Replaced by Engrossed Amendment      VA=Vote After Roll Call      OO=Out of Order  
 -R=Reconsidered      RS=Replaced by Substitute Amendment      VC=Vote Change After Roll Call      AV=Abstain from Voting

By Senator Diaz

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2019962\_\_

1                   A bill to be entitled  
2       An act relating to malt beverages; creating s.  
3       563.061, F.S.; defining terms; prohibiting sales and  
4       purchases of malt beverages on consignment or any  
5       basis other than a bona fide sale; authorizing a  
6       vendor to request return of undamaged product, damaged  
7       product, and out-of-code product to a distributor;  
8       authorizing a distributor to accept such returns under  
9       certain circumstances; providing requirements for the  
10      exchange of product; specifying that a distributor is  
11      not required to accept returns authorized by the act;  
12      requiring a distributor to take certain actions if the  
13      distributor accepts return of product; requiring the  
14      distributor to keep transaction records of each return  
15      for a specified time; requiring the records to contain  
16      certain information; requiring the distributor to  
17      provide a copy of the transaction record to a vendor  
18      and the Division of Alcoholic Beverages and Tobacco  
19      under certain circumstances; providing requirements  
20      for the maintenance of the transaction records;  
21      providing that returns pursuant to the act are not  
22      considered gifts, loans, or other forms of financial  
23      aid or assistance for purposes of tied house evil;  
24      providing for a civil penalty; authorizing the  
25      division to adopt rules; providing an effective date.

26  
27   Be It Enacted by the Legislature of the State of Florida:

28  
29       Section 1. Section 563.061, Florida Statutes, is created to



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30 read:

31 563.061 Return of malt beverage products; prohibition of  
32 consignment sales.-

33 (1) DEFINITIONS.-As used in this section, the term:

34 (a) "Damaged product" means malt beverages, whether sold in  
35 individual containers or kegs, which, upon delivery to a vendor,  
36 exhibit product deterioration, defective seals, leaking, damaged  
37 labels, or missing or mutilated tamper-evident closures.

38 (b) "Manufacturer's code date" means a coded best-by date,  
39 expiration date, or other designated date or dating system  
40 established by a manufacturer to signify the freshness of its  
41 malt beverages and which is printed on the malt beverage  
42 container or, in the case of a keg, marked on a cap, collar,  
43 tag, or label affixed to the keg.

44 (c) "Out-of-code product" means malt beverages, whether  
45 sold in individual containers or kegs, which have exceeded the  
46 manufacturer's code date and which, according to the  
47 manufacturer's policies, must be removed and replaced with fresh  
48 products to ensure that only fresh malt beverages are available  
49 for purchase at retail.

50 (d) "Undamaged product" means malt beverages, whether sold  
51 in individual containers or kegs, which are not damaged products  
52 or out-of-code products.

53 (2) CONSIGNMENT SALES PROHIBITED; AUTHORIZED BONA FIDE  
54 RETURNS.-A distributor may not sell, offer for sale, or contract  
55 to sell malt beverages on consignment or any basis other than a  
56 bona fide sale. A vendor may not purchase, offer to purchase, or  
57 contract to purchase malt beverages on consignment or any basis  
58 other than a bona fide sale. Once a distributor sells malt

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59 beverages to a vendor, only bona fide returns are allowed for  
60 the ordinary and usual commercial reasons authorized in this  
61 section. A product may not be returned because it is overstocked  
62 or slow-moving or because there is only limited or seasonal  
63 demand for the product.

64 (3) RETURNS OF UNDAMAGED PRODUCT.—A vendor may request  
65 return of undamaged product to a distributor and, unless  
66 otherwise provided in paragraphs (a)-(f), a return under this  
67 subsection may only be for exchange of product or for a credit.  
68 A distributor may not accept a return of undamaged product  
69 unless the return is requested within 7 days after the delivery  
70 date or unless:

71 (a) There is a change in regulation or administrative  
72 procedure over which the vendor or its employees or agents have  
73 no control, including, but not limited to, when a particular  
74 brand or container size is no longer allowed to be sold. A  
75 return under this paragraph may be for a credit or a refund.

76 (b) A vendor terminates operations and requests return of  
77 any remaining products on hand. A return under this paragraph  
78 may be for a credit or a refund. This paragraph does not apply  
79 to a vendor's temporary seasonal shutdown.

80 (c) Except as provided in paragraph (f), a vendor requests  
81 return of a product for purposes of quality control or  
82 freshness, and the product has not yet exceeded the  
83 manufacturer's code date. A return under this paragraph may only  
84 be for exchange of product.

85 (d) A manufacturer has issued a product recall that affects  
86 multiple vendors who are not affiliated with one another through  
87 having common ownership, through being members of the same pool

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88 buying group, or through being members of the same advertising  
89 cooperative. A return under this paragraph may be for exchange  
90 of product or for a credit.

91 (e) A vendor requests a return because the production or  
92 importation of a product is discontinued. A vendor's inventory  
93 of the discontinued product may be returned under this paragraph  
94 for a credit or a refund.

95 (f) A vendor who is open for a portion of the year has  
96 product remaining at closure which, with respect to quality  
97 control or freshness, would become unsuitable for sale during  
98 the off-season, according to the manufacturer's code date. A  
99 return under this paragraph may be for credit or a refund.

100  
101 If undamaged product is returned pursuant to paragraphs (a)-(f),  
102 documentation of a qualifying exception in paragraphs (a)-(f)  
103 must be kept with the transaction record maintained by the  
104 distributor pursuant to subsection (8).

105 (4) RETURNS OF DAMAGED PRODUCT.—

106 (a) A vendor may request return of damaged product to a  
107 distributor, and a return under this subsection may only be for  
108 exchange of product or for a credit. The distributor must verify  
109 that the product is damaged before accepting the return. A  
110 vendor is liable for any product damaged by the vendor or its  
111 customers and such product may not be returned.

112 (b) A distributor may accept a return of damaged product if  
113 the return is requested within 7 days after the delivery date.

114 (5) RETURNS OF OUT-OF-CODE PRODUCT.—

115 (a) A vendor may request return of out-of-code product to a  
116 distributor, and a return under this subsection may only be for

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117 exchange of product. The distributor must verify that the  
118 product is an out-of-code product before accepting such return.

119 (b) A distributor may accept a return of out-of-code  
120 product at any time after the manufacturer's code date if:

121 1. The manufacturer has written policies and procedures  
122 that specify the date that product should be removed;

123 2. Such policies and procedures are readily verifiable and  
124 consistently followed by the manufacturer; and

125 3. The manufacturer's code date is printed on the product  
126 container or, in the case of a keg, marked on a cap, collar,  
127 tag, or label affixed to the keg.

128 (c) Out-of-code product returned to a distributor may not  
129 reenter the retail market.

130 (6) EXCHANGES OF PRODUCT.—An exchange of product authorized  
131 under this section must be in exact quantities with product of  
132 near or equal value made by the same manufacturer and in the  
133 same size individual container or keg unless a credit, if  
134 authorized by this section, is issued at the time of the return  
135 with supporting documentation.

136 (7) DISTRIBUTOR NOT REQUIRED TO ACCEPT RETURNS.—This  
137 section does not require a distributor to accept returns  
138 authorized under this section. If a distributor accepts a return  
139 of product, the distributor must:

140 (a) Provide the exchange of product, the credit, or the  
141 refund to the vendor, as provided in subsections (3), (4), and  
142 (5), at the same time the distributor picks up the product being  
143 returned; and

144 (b) For damaged or undamaged product, pick up the product  
145 being returned within 14 days after receipt of the vendor's

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146 request.

147 (8) TRANSACTION RECORDS.—

148 (a) A distributor must keep and maintain for 3 years a  
149 transaction record of each return which identifies:

150 1. The licensed vendor;

151 2. The licensed vendor's business name and address;

152 3. The licensed vendor's license number;

153 4. The product returned for exchange of product, credit, or  
154 refund; and

155 5. Any documentation required by this section.

156 (b) The distributor must provide a copy of the transaction  
157 record to the vendor in a format accessible by and legible to  
158 the vendor. The distributor must provide a copy of the  
159 transaction record to the division upon request in a format  
160 accessible by and legible to the division.

161 (c) The transaction records must be maintained on the  
162 distributor's licensed premises, or may be kept at another  
163 location in this state if the distributor notifies the division  
164 in writing before using the other location. The distributor must  
165 notify the division in writing of any change in recordkeeping  
166 location.

167 (9) RETURNS NOT TIED HOUSE EVIL.—Bona fide returns made  
168 pursuant to this section for exchange of product, credit, or  
169 refund are not considered gifts, loans, or other forms of  
170 financial aid or assistance that are prohibited by s. 561.42.

171 (10) CIVIL PENALTY.—In accordance with s. 561.29, the  
172 division shall impose a civil penalty of \$1,000 per violation  
173 against a distributor or vendor who violates this section or any  
174 rule adopted under this section.

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175       (11) RULEMAKING AUTHORITY.—The division may adopt rules to  
176 administer and enforce this section.

177       Section 2. This act shall take effect July 1, 2019.

**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 Innovation, Industry, and Technology

---

BILL: CS/SB 334

INTRODUCER: Innovation, Industry, and Technology Committee and Senator Brandes

SUBJECT: Professional Regulation

DATE: March 12, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>IT</u>	<u>Fav/CS</u>
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	<u>RC</u>	_____

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 334 creates a process for reviewing the criminal history of applicants for specified professions or occupations regulated by the Department of Business and Professional Regulation (DBPR) and the Department of Health (DOH). The process in the bill applies to certified nursing assistants, regulated by the DOH, and to barbers, cosmetologists, and cosmetology specialists, i.e., hair braiders, hair wrappers, and body wrappers, and specified construction professionals, all regulated by the DBPR.

The process in the bill permits a person to apply for a license while under criminal confinement or supervision. It limits the period during which an agency may consider the criminal history as an impairment to licensure to seven years from the date of the criminal conviction. However, as required under current law, the DOH must deny a certified nursing assistant application, if the applicant has a criminal history of more than three years from the date of the application, and the applicant's criminal history relates to certain violent felonies, crimes against children, sexual offenses, or financial crimes that may currently disqualify an applicant from a certified nursing assistant license.

For the professions licensed by the DBPR, the bill does not exempt any specific crimes from the licensure process specified in the bill.

By October 1, 2019, the bill requires the DBPR and DOH to compile and post on their respective websites a list of crimes that do not relate to the practice of the profession or the ability to practice the profession and do not constitute grounds for denial of a license application. By that date, each agency must also begin to compile a separate list of crimes that, when reported by an applicant for a license, were not used for as a basis for denial in the past two years.

The bill provides an effective date of July 1, 2019.

## II. Present Situation:

### Department of Business and Professional Regulation

Section 20.165, F.S., establishes the organizational structure of the DBPR, which has 12 divisions tasked with the regulation of several professions and businesses.<sup>1</sup> Fifteen boards and programs exist within the Division of Professions,<sup>2</sup> two boards are within the Division of Real Estate,<sup>3</sup> and one board exists in the Division of Certified Public Accounting.<sup>4</sup>

Chapter 455, F.S., applies to the regulation of professions constituting “any activity, occupation, profession, or vocation regulated by the DBPR in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.”<sup>5</sup>

Chapter 455, F.S., provides the general powers of the DBPR and sets forth the procedural and administrative framework for all of the professional boards housed under the DBPR as well as the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.<sup>6</sup> The DBPR may engage in the regulation of professions “only for the preservation of the health, safety, and welfare of the public under the police powers of the state.”<sup>7</sup> Regulation is required when:

- The potential for harming or endangering public health, safety, and welfare is recognizable and outweighs any anticompetitive impact that may result;
- The public is not effectively protected by other state statutes, local ordinances, federal legislation, or other means; and

<sup>1</sup> See s. 20.165, F.S., creating the divisions of Administration; Alcoholic Beverages and Tobacco; Certified Public Accounting; Drugs, Devices, and Cosmetics; Florida Condominiums, Timeshares, and Mobile Homes; Hotels and Restaurants; Pari-mutuel Wagering; Professions; Real Estate; Regulation; Service Operations; and Technology.

<sup>2</sup> Section 20.165(4)(a), F.S., establishes the following boards and programs which are noted with the implementing statutes: Board of Architecture and Interior Design, part I of ch. 481; Florida Board of Auctioneers, part VI of ch. 468; Barbers’ Board, ch. 476; Florida Building Code Administrators and Inspectors Board, part XII of ch. 468; Construction Industry Licensing Board, part I of ch. 489; Board of Cosmetology, ch. 477; Electrical Contractors’ Licensing Board, part II of ch. 489; Board of Employee Leasing Companies, part XI of ch. 468; Board of Landscape Architecture, part II of ch. 481; Board of Pilot Commissioners, ch. 310; Board of Professional Engineers, ch. 471; Board of Professional Geologists, ch. 492; Board of Veterinary Medicine, ch. 474; Home Inspection Services Licensing Program, part XV of ch. 468; and Mold-related Services Licensing Program, part XVI of ch. 468, F.S.

<sup>3</sup> See s. 20.165(4)(b), F.S. Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S., and Florida Real Estate Commission, created under part I of ch. 475, F.S.

<sup>4</sup> See s. 20.165(4)(c), F.S., which establishes the Board of Accountancy, created under ch. 473, F.S.

<sup>5</sup> Section 455.01(6), F.S.

<sup>6</sup> See s. 455.203, F.S. The DBPR must also provide legal counsel for boards within the DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by providing DBPR staff counsel. See s. 455.221(1), F.S.

<sup>7</sup> Section 455.201(2), F.S.



- Less restrictive means of regulation are not available.<sup>8</sup>

However, “neither the department nor any board may create a regulation that has an unreasonable effect on job creation or job retention,” or a regulation that unreasonably restricts the ability of those who desire to engage in a profession or occupation to find employment.<sup>9</sup>

When a person is authorized to engage in a profession or occupation in Florida, the DBPR issues a “permit, registration, certificate, or license” to the licensee.<sup>10</sup>

In Fiscal Year 2017-2018, there were 434,574 licensees in the Division of Professions,<sup>11</sup> including, in relevant part:

- Barbers (22,119 active and 227 inactive);
- Cosmetologists (247,960 active and 1,568 inactive);
- Construction industry contractors (75,089 active and 15,404 inactive); and
- Electrical contractors (12,631 active and 1,368 inactive).

Sections 455.203 and 455.213, F.S., establish general licensing authority for the DBPR, including the authority to charge license fees and license renewal fees. Each board within the DBPR must determine by rule the amount of license fees for each profession, based on estimates of the required revenue to implement the regulatory laws affecting the profession.<sup>12</sup>

### **Licensing and Criminal Background**

Section 112.011, F.S., outlines general guidelines for considering criminal convictions during licensure determinations. Generally, a person may be denied a professional license based on his or her prior conviction of a crime if the crime was a felony or first-degree misdemeanor that is directly related to the standards determined by the regulatory authority to be necessary and reasonably related to the protection of the public health, safety, and welfare for the specific profession for which the license is sought.<sup>13</sup> Notwithstanding any law to the contrary, a state agency may not deny an application for a license based solely on the applicant’s lack of civil rights.<sup>14</sup>

### **DBPR Licensing and Criminal Background**

The regulatory boards of the DBPR, or the department if there is no board, may deny a license application for any person who it finds guilty of any of the grounds for discipline set forth in s. 455.227(1), F.S., or set forth in the profession’s practice act.<sup>15</sup> Specifically, the regulatory board,

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

<sup>9</sup> Section 455.201(4)(b), F.S.

<sup>10</sup> Section 455.01(4) and (5), F.S.

<sup>11</sup> See Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2017-2018*, at <http://www.myfloridalicense.com/DBPR/os/documents/ProfessionsAnnualReport2017-2018.pdf> (last visited March 5, 2019) at page 19.

<sup>12</sup> Section 455.219(1), F.S.

<sup>13</sup> Section 112.011(1)(b), F.S.

<sup>14</sup> Section 112.011(1)(c), F.S.

<sup>15</sup> Section 455.227(2), F.S.

or the department if there is no board, may deny a license application for any person having been:

convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession.<sup>16</sup> (Emphasis added.)

Section 455.227, F.S., does not specifically require the DBPR or the applicable regulatory board to consider the passage of time since the disqualifying criminal offense before denying or granting a license.

### ***Department of Health***

The DOH or an applicable board may deny the licensure of any applicant who has been “convicted of or pled guilty or nolo contendere to, regardless of adjudication, any felony or misdemeanor related to the practice of a health care profession regulated by this state.”<sup>17</sup>

The DOH must also deny an application for licensure for any felony related to social welfare fraud, other fraudulent practices, or controlled substances, if the crime is:

- A felony of the first or second degree, more than 15 years before the date of application.
- A felony of the third degree, more than 10 years before the date of application, except for felonies of the third degree under s. 893.13(6)(a), F.S, relating to possession of a controlled substance.
- A felony of the third degree under s. 893.13(6)(a), more than 5 years before the date of application.<sup>18</sup>

The DOH must also deny a license application if the felony conviction is for federal crimes related controlled substance violations under 21 U.S.C. ss. 801-970, or health insurance for the aged or disabled or medical assistance grants under 42 U.S.C. ss. 1395-1396, unless the sentence and any subsequent period of probation for a conviction or plea ended more than 15 years before the date of the application.

### **Barbers**

Barbers are regulated under ch. 476, F.S., by the Barber's Board within the DBPR. To be licensed as a barber, a person must be at least 16 years of age, satisfactorily complete a licensure examination, and pay the required application fee. In order to be eligible to sit for the licensure examination, a person must have held a license to practice barbering in another state for at least one year or have received a minimum of 1,200 hours of training.<sup>19</sup>

“Barbering” includes any of the following practices when done for payment by the public, but not when done for the treatment of disease or physical or mental ailments: shaving, cutting,

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<sup>16</sup> Section 455.227(1)(c), F.S.

<sup>17</sup> Sections 456.024(3)(c), F.S.

<sup>18</sup> See s. 456.0635(a), F.S.

<sup>19</sup> See s. 476.114, F.S.

trimming, coloring, shampooing, arranging, dressing, curling, or waving the hair or beard or applying oils, creams, lotions, or other preparations to the face, scalp, or neck, either by hand or by mechanical appliances.<sup>20</sup>

Chapter 476, F.S., does not provide a basis for denial of a license application based on a person's criminal background. However, a person may be denied a license application as a barber for any violation of s. 455.227, F.S., which authorizes the denial of a license on the basis of a criminal background related to the practice of, or the ability to practice, a licensee's profession.<sup>21</sup>

### **Cosmetologists**

Chapter 477, F.S., governs the licensing and regulation of cosmetologists, hair wrappers, hair braiders, nail specialists, facial specialists, full specialists, body wrappers and related salons in the state. The Board of Cosmetology processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the cosmetology industry.

Individuals are prohibited from providing manicures or pedicures in Florida without first being registered as a nail specialist, full specialist, or cosmetologist.<sup>22</sup>

A "specialist" is defined as "any person holding a specialty registration in one or more of the specialties registered under [ch. 477, F.S.]."<sup>23</sup> The term "specialty" is defined as "the practice of one or more of the following:

- Manicuring, or the cutting, polishing, tinting, coloring, cleansing, adding, or extending of the nails, and massaging of the hands. This term includes any procedure or process for the affixing of artificial nails, except those nails which may be applied solely by use of a simple adhesive;
- Pedicuring, or the shaping, polishing, tinting, or cleansing of the nails of the feet, and massaging or beautifying of the feet;
- Facials, or the massaging or treating of the face or scalp with oils, creams, lotions, or other preparations, and skin care services."<sup>24</sup>

A "cosmetologist" is a person who is licensed to engage in the practice of cosmetology in Florida under the authority of ch. 477, F.S.<sup>25</sup> "Cosmetology" is defined as "the mechanical or chemical treatment of the head, face, and scalp for aesthetic rather than medical purposes, including, but not limited to, hair shampooing, hair cutting, hair arranging, hair coloring, permanent waving, and hair relaxing for compensation. This term also includes performing hair removal, including wax treatments, manicures, pedicures, and skin care services."<sup>26</sup>

A nail specialist may complete manicures and pedicures. A full specialist may complete manicures, pedicures, and facials. Manicures and pedicures, as a part of cosmetology services,

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<sup>20</sup> Section 476.034(2), F.S.

<sup>21</sup> See s. 455.227(1)(c), F.S.

<sup>22</sup> Section 477.014, F.S.

<sup>23</sup> Section 477.013(5), F.S.

<sup>24</sup> Section 477.013(6), F.S.

<sup>25</sup> Section 477.013(3), F.S.

<sup>26</sup> Section 477.013(4), F.S.

are required to be provided in a licensed specialty salon or cosmetology salon.<sup>27</sup> All cosmetology and specialty salons are subject to inspection by the DBPR.<sup>28</sup>

To qualify for a specialist license, the applicant must be at least 16 years old or have a high school diploma, obtain a certificate of completion from an approved specialty education program, and submit an application for registration with the DBPR with the registration fee.<sup>29</sup>

To qualify for a license as a cosmetologist, the applicant must be at least 16 years old, have received a high school diploma, have submitted an application with the applicable fee and examination fee, and have either a license in another state or country for at least one year, or have received 1,200 hours training including completing an education at an approved cosmetology school or program. The applicants must also pass all parts of the licensure examination.<sup>30</sup>

The act of painting nails with fingernail polish falls under the scope of manicuring, even if the individual is not cutting, cleansing, adding, or extending the nails. Therefore, individuals seeking to add polish to fingernails and toenails for compensation are required to obtain a registration as a specialist or a license as a cosmetologist.

The Board of Cosmetology may deny a cosmetology license or specialty registration application based on a person's criminal background. The board may deny a license or application for any violation of s. 455.227, F.S., which authorizes the denial of a license on the basis of a criminal background related to the practice of, or the ability to practice, a licensee's profession.<sup>31</sup>

### **Construction Contracting Professionals**

The Construction Industry Licensing Board (CILB) within the DBPR is responsible for licensing and regulating the construction industry in this state under part I of ch. 489, F.S.<sup>32</sup> The CILB is divided into two divisions with separate jurisdictions:

- Division I comprises the general contractor, building contractor, and residential contractor members of the CILB. Division I has jurisdiction over the regulation of general contractors, building contractors, and residential contractors.
- Division II comprises the roofing contractor, sheet metal contractor, air-conditioning contractor, mechanical contractor, pool contractor, plumbing contractor, and underground utility and excavation contractor members of the CILB. Division II has jurisdiction over the regulation of roofing contractors, sheet metal contractors, class A, B, and C air-conditioning contractors, mechanical contractors, commercial pool/spa contractors, residential pool/spa contractors, swimming pool/spa servicing contractors, plumbing contractors, underground utility and excavation contractors, solar contractors, and pollutant storage systems contractors.

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<sup>27</sup> Section 477.0263, F.S.

<sup>28</sup> Section 477.025, F.S.

<sup>29</sup> Section 477.0201, F.S.

<sup>30</sup> Section 477.019(2), F.S.

<sup>31</sup> See s 477.029(1)(h), F.S.

<sup>32</sup> See s. 489.107, F.S.

A specialty contractor's scope of work and responsibility is limited to a particular phase of construction as detailed in an administrative rule adopted by the CILB. Jurisdiction is dependent on the scope of work and whether Division I or Division II has jurisdiction over such work in accordance with the applicable administrative rule.<sup>33</sup>

The Electrical Contractors' Licensing Board (ECLB) within the DBPR is responsible for licensing and regulating electrical contractors in this state under part II of ch. 489, F.S.<sup>34</sup>

Construction contractors under part I of ch. 489, F.S., and electrical contractors under part II of ch. 489, F.S., must satisfactorily complete a licensure examination before being licensed.<sup>35</sup>

Master septic tank contractors and septic tank contractors are regulated by the DBPR under part III of ch. 489, F.S. Septic tank contractors must pass an examination and register with the DBPR before engaging in the occupation.<sup>36</sup> A master septic tank contractor must have at least 3 years' experience as a registered septic tank contractor or a plumbing contractor certified under part I of ch. 489, F.S., who has provided septic tank contracting services for at least 3 years.

The CILB and the ECLB may deny a license application for any person who it finds guilty of any of the grounds for discipline set forth in s. 455.227(1), F.S., or set forth in the profession's practice act.<sup>37</sup> Specifically, the CILB may deny a license application for any person having been convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of, or the ability to practice, a licensee's profession.<sup>38</sup>

The CILB and the ECLB may also deny a registration application under s. 455.227, F.S., which authorizes the denial of a license on the basis of a criminal background related to the practice of, or the ability to practice, a profession.<sup>39</sup>

To be eligible for registration by the DBPR, master septic tank contractors and septic tank contractors must be of good moral character. In considering good moral character, the DBPR may consider any matter that has a substantial connection between the good moral character of the applicant and the professional responsibilities of a registered contractor, including, but not limited to:

the applicant being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of contracting or the ability to practice contracting...<sup>40</sup> (Emphasis added.)

<sup>33</sup> For example, specialty swimming pool contractors have limited scopes of work for the construction of pools, spas, hot tub, and decorative or interactive water displays. *See* Fla. Admin. Code R. 61G4-15.032 (2016).

<sup>34</sup> Section 489.507, F.S.

<sup>35</sup> *See* ss. 489.113 and 489.516, F.S., respectively.

<sup>36</sup> Sections 489.552 and 489.553, F.S.

<sup>37</sup> Section 455.227(2), F.S.

<sup>38</sup> Sections 489.129(1)(b) and 489.553(1)(d), F.S., proving the disciplinary grounds for construction contractors and electrical contractors, respectively.

<sup>39</sup> *See* s 477.029(1)(h), F.S.

<sup>40</sup> Section 489.553(4)(a), F.S.

The DBPR may also deny a registration application under s. 455.227, F.S., which authorizes the denial of a license on the basis of a criminal background related to the practice of, or the ability to practice, a profession.<sup>41</sup>

Chapter 489, F.S., does not specifically require the DBPR, the CILB, or the ECLB to consider the passage of time since the disqualifying criminal offense before denying or granting a license or registration.

### **Certified Nursing Assistants**

The Board of Nursing within the DOH is responsible for licensing and regulating the certified nursing assistants (CNA) under part II of ch. 464, F.S.<sup>42</sup> In Fiscal Year 2017-2018, there were 147,500 active certified nursing assistants.<sup>43</sup>

The “practice of a certified nursing assistant” means:

providing care and assisting persons with tasks relating to the activities of daily living. Such tasks are those associated with personal care, maintaining mobility, nutrition and hydration, toileting and elimination, assistive devices, safety and cleanliness, data gathering, reporting abnormal signs and symptoms, postmortem care, patient socialization and reality orientation, end-of-life care, cardiopulmonary resuscitation and emergency care, residents’ or patients’ rights, documentation of nursing-assistant services, and other tasks that a certified nurse assistant may perform after training beyond that required for initial certification and upon validation of competence in that skill by a registered nurse.<sup>44</sup>

The definition of “practice of a certified nursing assistant” does not restrict a person who is otherwise trained and educated from performing the tasks specified in the definition.<sup>45</sup>

To be certified in Florida, a person must have a high school diploma, or its equivalent; or be at least 18 years of age, and pass a nursing assistant competency examination. Alternatively, a person may be certified in Florida if he or she is certified by another state and has not been found to have committed abuse, neglect, or exploitation in that state.<sup>46</sup>

The qualifications for certification as a CNA do not specifically refer to a person’s criminal background, but an applicant must pass a background screening pursuant to s. 400.215, F.S., which requires the personnel of nursing homes and related healthcare facilities to pass a level

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<sup>41</sup> See s 477.029(1)(h), F.S.

<sup>42</sup> See s. 489.107, F.S.

<sup>43</sup> See Florida Department of Health, Division of Medical Quality Assurance, *Annual Report & Long-range Plan, Fiscal Year 2017-2018*, at [http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/\\_documents/annual-report-1718.pdf](http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/_documents/annual-report-1718.pdf) (last visited March 6, 2019) at page 16.

<sup>44</sup> Section 464.201(5), F.S.

<sup>45</sup> *Id.*

<sup>46</sup> Section 464.203, F.S.

two background screening, or s. 408.809, F.S., which also requires pre-employment, level two background screening for specified persons, including employees of medical facilities.<sup>47</sup> The background screening must be completed every 5 years following licensure, employment, or entering into contract in a capacity that requires background screening.<sup>48</sup>

Level two background screening ensures that a subject of the screening has not been arrested for, is not awaiting final disposition of, has not been found guilty of, regardless of adjudication, or not entered a plea of nolo contendere or guilty to, or has been adjudicated delinquent and the record has not been sealed or expunged for, any of the 52 prohibited offenses.<sup>49</sup> The prohibited offenses include violent crimes, property crimes, and sexual offenses.<sup>50</sup>

In addition to the crimes specified under s. 435.04, F.S., a CNA may not have a felony record for certain specified felony financial crimes, including Medicaid fraud and forgery.<sup>51</sup>

A level two background screening includes fingerprinting for statewide criminal history records checks through the Florida Department of Law Enforcement (FDLE) and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies. Once the background screening is complete, and the FDLE receives the information from the FBI, the criminal history information is transmitted to DOH. The DOH determines if the screening contains any disqualifying information for employment.

If a person is disqualified from employment due to failing the required background screening, the DOH may grant an exemption from disqualification for:

- Felonies for which at least three years have elapsed since the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for the disqualifying felony;
- Misdemeanors prohibited under any of the statutes cited in this chapter or under similar statutes of other jurisdictions for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court;
- Offenses that were felonies when committed but that are now misdemeanors and for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court; or
- Findings of delinquency.<sup>52</sup>

However, if the disqualifying crime committed while the applicant was a delinquent would be considered a felony if committed by an adult, and the record has not been sealed or expunged, the DOH may not grant an exemption until at least 3 years have elapsed since the applicant's

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<sup>47</sup> Section 408.809(1), F.S.

<sup>48</sup> Section 408.809(2), F.S.

<sup>49</sup> Section 435.04, F.S.

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

<sup>51</sup> See 408.809(4), F.S.

<sup>52</sup> Section 435.07(1)(a), F.S.

completion or lawful release from confinement, supervision, or nonmonetary condition imposed by the court for the offense.<sup>53</sup>

An applicant who seeks an exemption must first pay any court-ordered amount for any fee, fine, fund, lien, civil judgment, application, costs of prosecution, trust, or restitution as part of the judgment and sentence for the disqualifying crime.<sup>54</sup>

However, the DOH may not grant an exemption to an individual who is found guilty of, regardless of adjudication, or who has entered a plea of *nolo contendere* or guilty to, any felony covered by s. 435.03 or s. 435.04, F.S., solely by reason of any pardon, executive clemency, or restoration of civil rights.<sup>55</sup>

An exemption may also not be granted to anyone who is a sexual predator, career offender, or sexual offender (unless not required to register).<sup>56</sup> The agency may not grant an exemption from disqualification to persons with a criminal history that includes other violent felonies, crimes against children, and sex-related crimes, such as felony domestic violence, luring or enticing a child, sexual battery, child pornography, and child abuse.<sup>57</sup>

### **Department of Corrections**

The Department of Corrections (DOC) indicates that it has limited funding for the provision of career and technical education. The funding includes the legislative appropriation and supplemental funds provided through the Department of Education, Carl D. Perkins grant. The DOC employs Full-Time Equivalent vocational teachers and contracts with community colleges and technical schools for the provision of instruction and issues vocational certificates and/or industry-recognized certifications to program completers. State inmates currently have limited opportunity to participate in the following programs that require state certification or licensure:

- Commercial Driving, Class A and B General Knowledge Test: \$75.00 each (Department of Highway Safety and Motor Vehicles).
- Wastewater and Water Distribution System Operator application and exam: \$20.00 (Department of Environmental Protection).
- Cosmetology application and exam: \$63.50 (Department of Business and Professional Regulation).
- Barber application and exam: \$250.00 (Department of Business and Professional Regulation).
- Certified Nursing Assistant: \$140.00 (Department of Health).<sup>58</sup>

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<sup>53</sup> *Id.*

<sup>54</sup> Section 435.07(1)(b), F.S.

<sup>55</sup> *See* s. 435.07(4)(a), F.S.

<sup>56</sup> *See* s. 435.07(4)(b), F.S.

<sup>57</sup> *See* s. 435.07(4)(c), F.S.

<sup>58</sup> 2019 Agency Legislative Bill Analysis for SB 334, Department of Corrections, October 1, 2019.



### III. Effect of Proposed Changes:

The bill creates a process for reviewing the criminal history of applicants for specified professions or occupations regulated by the DBPR and the DOH.

The bill amends s. 455.213, F.S., dealing with the general licensing provisions of the DBPR, and s. 464.203, F.S., dealing with the certification requirements for certified nursing assistants under the DOH.

The license application review process in the bill applies to the following professions and occupations:

- Certified Nursing Assistants.
- Barbers.
- Cosmetologists and cosmetology specialists (i.e., hair braiders, hair wrappers, and body wrappers).
- Construction Professionals:
  - Air-conditioning contractors;
  - Commercial pool/spa contractors;
  - Electrical contractors;
  - Mechanical contractors;
  - Plumbing contractors;
  - Pollutant storage systems contractor;
  - Residential swimming pool and spa contractors;
  - Roofing contractors;
  - Septic tank contractors;
  - Sheet metal contractors;
  - Solar contractors;
  - Swimming pool and spa servicing contractors
  - Underground utility and excavation contractors; and
  - Specialty contractors whose scope of work and responsibility is limited to a particular phase of construction, e.g. drywall, glazing, swimming pool excavation, etc.

The process created in the bill:

- Limits the period during which the agency may consider criminal history as an impairment to licensure to three years from the date of the criminal conviction.<sup>59</sup>
- Permits a person to apply for a license while under criminal confinement (incarceration) or supervision.
  - Requires the licensing agency to permit applicants who are incarcerated or under supervision to appear by teleconference or video conference at a meeting of a board or the agency for a hearing concerning the person's license application.
  - Requires the Department of Corrections to cooperate and coordinate with the board or department, as applicable, to facilitate the appearance of the license applicant at the hearing in person, by teleconference, or by video conference, as appropriate.

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<sup>59</sup> Section 921.0021(2), F.S., defines "conviction" under the "Criminal Punishment Code" in ch. 921, F.S., to mean "a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld."

- Authorizes the licensing agency to stay its issuance of an approved license until the agency has verified the applicant's lawful release from incarceration with the Department of Corrections.
- By October 1, 2019, requires each agency to:
  - Compile and post on the agency's website a list of crimes that do not relate to the practice of the profession or the ability to practice the profession and do not constitute grounds for denial of a license application.
  - Begin to compile a separate list of crimes that, when reported by an applicant for a license, were not used for as a basis for denial in the past two years. Such list must identify the crime reported and the date of conviction, plea, or sentencing. The agency must maintain the list on its website and update it at least quarterly.

The bill does not change license qualifications in current law for any of the professions, including any disqualifications in current law based on the applicant's criminal history or moral character.

For the professions licensed by the DBPR, the bill does not exempt any specific crimes from the licensure process specified in the bill.

However, for CNA license applicants, the bill exempts a history of crimes specified ss. 408.809, 435.04, 435.07(4), and 456.0635, F.S., from the process provided in the bill for a CNA license application. Consequently, the DOH must deny a certified nursing assistant application, if the applicant's criminal history includes any of the felony financial crimes, including Medicaid fraud and forgery, identified in s. 435.04, F.S., or any of the crimes identified in s. 456.0635, F.S. Additionally, the DOH must deny a CNA license application for an applicant's failure to pass a background screening because of a criminal history that include a violent felony, crime against children, or sexual offense identified in s. 435.07(4), F.S., or any of the crimes identified in ss. 408.809 and 456.0635, F.S. Additionally, the DOH must continue to consider as a grounds for denial of a CNA license application the passage of time since conviction, as specified in those sections.

The bill provides an effective date of July 1, 2019.

#### **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 Department of Business and Professional Regulation and the Department of Health indicated that implementation costs would be minimal.

The Department of Corrections indicated that teleconference equipment should be available for use at each institution. If an inmate is needed to appear in person, transportation costs would be minimal.<sup>60</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 455.213, 464.203, and 400.211.

**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 Innovation, Industry, and Technology on March 12, 2019:**

The CS requires Certified Nursing Assistant license applicants to qualify under

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<sup>60</sup> 2019 Agency Legislative Bill Analysis for SB 334, Department of Corrections, October 1, 2019.

s. 408.809, F.S., which requires pre-employment, level two background screening for specified persons, including employees of medical facilities.

**B. Amendments:**

None.

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

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131354

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/13/2019	.	
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The Committee on Innovation, Industry, and Technology (Brandes) recommended the following:

**Senate Amendment**

Delete lines 146 - 152

and insert:

(2) (a) 1. Except as provided in ss. 408.809, 435.04, and 456.0635, the criminal history of an applicant may not be used as grounds for denial of a certificate to practice as a certified nursing assistant if the date of conviction, plea, adjudication, or sentencing is more than 3 years before the date of the application.



131354

11           2. Except as provided in ss. 408.809, 435.07(4), and  
12 456.0635, the



The Florida Senate

## Committee Agenda Request

**To:** Senator Wilton Simpson  
Committee on Innovation, Industry, and  
Technology

**Subject:** Committee Agenda Request

**Date:** January 28, 2019

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I respectfully request that **Senate Bill #334**, relating to **Professional Regulation**, be placed on the:

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

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

\_\_\_\_\_  
Senator Jeff Brandes  
Florida Senate, District 24

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/12/2019 Meeting Date

SB 334 Bill Number (if applicable)

Topic Professional Regulation

Amendment Barcode (if applicable)

Name Jane Dew

Job Title

Address 2909 EaglePoint Rd Street

Phone 904 571-8871

Middleburg FL 32068-7222 City State Zip

Email lunareuchantments@gmail.com

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.



THE FLORIDA SENATE

APPEARANCE RECORD

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3/12/19  
Meeting Date

SB 334  
Bill Number (if applicable)

Topic Professional Regulation SB 334  
Amendment Barcode (if applicable)

Name David Johnson

Job Title

Address 2301 Plainfield Avenue

Phone 904-564-4304

Street  
City Orange Park FL 32073  
State Zip

Email dj.jj@icloud.com

Speaking:  For  Against  Information

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

~~Representing~~ Returning Citizens deserve a second chance  
for employment

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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3/12/2019 Meeting Date

334 Bill Number (if applicable)

Topic Occupational Licensing

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroe Street

Phone (850) 687-0024

Tallahassee FL 32301

Email jorge@flapartners.com

City State Zip

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

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

Representing FGA Action

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.

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

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

3/12/19

334

*Meeting Date*

*Bill Number (if applicable)*

Topic Professional Regulation

*Amendment Barcode (if applicable)*

Name Logan Padgett

Job Title Director of Communications

Address 100 N Duval Street

Phone 850-386-3131

*Street*

Tallahassee

FL

32301

Email lpadgett@jamesmadison.org

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing The James Madison 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)

3/12/19 Meeting Date

334

Bill Number (if applicable)

Topic PROFESSIONAL REGULATION

Amendment Barcode (if applicable)

Name Christian R. Camara -- Institute for Justice

Job Title Legislative Fellow

Address 901 N Glebe Road, Suite 900

Phone 305.721.1600

Street

Arlington

VA

22203

City

State

Zip

Email Christian@ChamberConsultantsFL.com

Speaking: [ ] For [ ] Against [ ] Information

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

Representing Institute for Justice

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.

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THE FLORIDA SENATE

APPEARANCE RECORD

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3/12/19

Meeting Date

334

Bill Number (if applicable)

Topic Professional Regulation

Amendment Barcode (if applicable)

Name Phillip Suderman

Job Title Policy Director

Address 200 W. College Ave.

Phone

Street

Tallahassee

FL

32301

Email

City

State

Zip

Speaking: [ ] 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.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3.12.19

Meeting Date

334

Bill Number (if applicable)

Topic Professional Regulation

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

Street

Tallahassee

FL

32308

Email barney@barneybishop.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing Florida Smart Justice Alliance

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.

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### The Florida Senate COMMITTEE VOTE RECORD

**COMMITTEE:** Innovation, Industry, and Technology  
**ITEM:** SB 334  
**FINAL ACTION:** Favorable with Committee Substitute  
**MEETING DATE:** Tuesday, March 12, 2019  
**TIME:** 1:30—3:30 p.m.  
**PLACE:** 110 Senate Building

FINAL VOTE		SENATORS	3/12/2019 <sup>1</sup> Amendment 131354					
			Brandes		Yea	Nay	Yea	Nay
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
		Bracy						
X		Bradley						
X		Brandes						
X		Braynon						
X		Farmer						
X		Gibson						
X		Hutson						
X		Passidomo						
X		Benacquisto, VICE CHAIR						
X		Simpson, CHAIR						
9	0	<b>TOTALS</b>	RCS	-				
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable      RCS=Replaced by Committee Substitute      TP=Temporarily Postponed      WD=Withdrawn  
 UNF=Unfavorable      RE=Replaced by Engrossed Amendment      VA=Vote After Roll Call      OO=Out of Order  
 -R=Reconsidered      RS=Replaced by Substitute Amendment      VC=Vote Change After Roll Call      AV=Abstain from Voting

**By** the Committee on Innovation, Industry, and Technology; and  
Senator Brandes

580-02956-19

2019334c1

1                                   A bill to be entitled  
2       An act relating to professional regulation; amending  
3       s. 455.213, F.S.; requiring certain boards and  
4       entities within the Divisions of Certified Public  
5       Accounting, Professions, or Real Estate of the  
6       Department of Business and Professional Regulation to  
7       use a specified process for the review of an  
8       applicant's criminal record to determine the  
9       applicant's eligibility for certain licenses;  
10      prohibiting the conviction, plea, adjudication, or  
11      sentencing of a crime before a specified date from  
12      being used as grounds for the denial of certain  
13      licenses; authorizing a person to apply for a license  
14      before his or her lawful release from confinement or  
15      supervision; prohibiting the Department of Business  
16      and Professional Regulation from imposing additional  
17      fees on certain applicants; prohibiting certain boards  
18      and entities from basing a denial of a license  
19      application solely on the applicant's current  
20      confinement or supervision; authorizing certain boards  
21      and entities to stay the issuance of an approved  
22      license under certain circumstances; requiring certain  
23      boards and entities to verify an applicant's release  
24      with the Department of Corrections; providing  
25      requirements for the appearance of certain applicants  
26      at certain meetings; requiring certain boards and  
27      entities to compile, publish, and update lists that  
28      specify how certain crimes affect an applicant's  
29      eligibility for licensure; amending s. 464.203, F.S.;



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30 prohibiting the conviction, plea, adjudication, or  
31 sentencing of a crime before a specified date from  
32 being used as grounds for the denial of certain  
33 certifications; providing that conviction of a crime  
34 which does not fall within a specified timeframe is  
35 not grounds for the failure of a background screening;  
36 authorizing a person to apply for certification before  
37 his or her lawful release from confinement or  
38 supervision; prohibiting the Department of Health from  
39 imposing additional fees on certain applicants;  
40 prohibiting the Board of Nursing from basing the  
41 denial of a certification solely on the applicant's  
42 current confinement or supervision; authorizing the  
43 board to stay the issuance of an approved certificate  
44 under certain circumstances; requiring the board to  
45 verify an applicant's release with the Department of  
46 Corrections; providing requirements for the appearance  
47 of certain applicants at certain meetings; requiring  
48 the board to compile and update lists that specify how  
49 certain crimes affect an applicant's eligibility for  
50 certification; amending s. 400.211, F.S.; conforming a  
51 cross-reference; providing an effective date.

52  
53 Be It Enacted by the Legislature of the State of Florida:

54  
55 Section 1. Present subsections (3) through (12) of section  
56 455.213, Florida Statutes, are redesignated as subsections (4)  
57 through (13), respectively, subsection (2) of that section is  
58 amended, and a new subsection (3) is added to that section, to

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59 read:

60 455.213 General licensing provisions.—

61 (2) Before the issuance of any license, the department may  
62 charge an initial license fee as determined by rule of the  
63 applicable board or, if no such board exists, by rule of the  
64 department. Upon receipt of the appropriate license fee, except  
65 as provided in subsection (4) ~~(3)~~, the department shall issue a  
66 license to any person certified by the appropriate board, or its  
67 designee, or the department when there is no board, as having  
68 met the applicable requirements imposed by law or rule. However,  
69 an applicant who is not otherwise qualified for licensure is not  
70 entitled to licensure solely based on a passing score on a  
71 required examination. Upon a determination by the department  
72 that it erroneously issued a license, or upon the revocation of  
73 a license by the applicable board, or by the department when  
74 there is no board, the licensee must surrender his or her  
75 license to the department.

76 (3) (a) Notwithstanding any other provision of law, the  
77 applicable board shall use the process established in this  
78 subsection for review of an applicant's criminal record to  
79 determine his or her eligibility for licensure as:

80 1. A barber under chapter 476;

81 2. A cosmetologist or cosmetology specialist under chapter  
82 477; or

83 3. Any of the following construction professionals under  
84 chapter 489:

85 a. Air-conditioning contractor;

86 b. Commercial pool/spa contractor;

87 c. Electrical contractor;

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88 d. Mechanical contractor;

89 e. Plumbing contractor;

90 f. Pollutant storage systems contractor;

91 g. Residential swimming pool/spa contractor;

92 h. Roofing contractor;

93 i. Septic tank contractor;

94 j. Sheet metal contractor;

95 k. Solar contractor;

96 l. Swimming pool/spa servicing contractor;

97 m. Underground utility and excavation contractor; and

98 n. Specialty contractor.

99 (b) The criminal history of an applicant for licensure in a  
100 profession specified in paragraph (a) may not be used as grounds  
101 for denial of the license if the date of conviction, plea, or  
102 adjudication, or the date of sentencing is more than 3 years  
103 before the date of application.

104 (c)1. A person may apply for a license before his or her  
105 lawful release from confinement or supervision. The department  
106 may not charge such an applicant an additional fee related to  
107 such confinement or supervision. The applicable board may not  
108 deny an application for a license solely on the basis of the  
109 applicant's current confinement or supervision.

110 2. After a license application is approved, the applicable  
111 board may stay the issuance of a license until the applicant is  
112 lawfully released from confinement or supervision and the  
113 applicant notifies the board of such release. The applicable  
114 board shall verify the applicant's release with the Department  
115 of Corrections before it issues a license.

116 3. If an applicant is unable to appear in person due to his

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117 or her confinement or supervision, the applicable board must  
118 allow the applicant to appear by teleconference or video  
119 conference, as appropriate, at any meeting of the board or other  
120 hearing by the department concerning his or her application.

121 4. If an applicant is confined or under supervision, the  
122 Department of Corrections and the applicable board shall  
123 cooperate and coordinate to facilitate the appearance of the  
124 applicant at a board meeting or department hearing in person, by  
125 teleconference, or by video conference, as appropriate.

126 (d) By October 1, 2019, each applicable board shall compile  
127 and post on the department's website a list of crimes that, if  
128 committed and regardless of adjudication, do not relate to the  
129 practice of the profession or the ability to practice the  
130 profession and do not constitute grounds for denial of a  
131 license. This list must be updated annually by each applicable  
132 board. In addition, as of that date, each such board shall begin  
133 to compile separate lists of such crimes that, when reported by  
134 an applicant for licensure, were and were not used as a basis  
135 for denial in the past 2 years. The lists, which must be  
136 available on the department's website and updated at least  
137 quarterly by the applicable board, must identify for each such  
138 approval or denial of license the crime reported and the date of  
139 conviction, plea, adjudication, or sentencing.

140 Section 2. Present subsections (2) through (8) of section  
141 464.203, Florida Statutes, are redesignated as subsections (3)  
142 through (9), respectively, and a new subsection (2) is added to  
143 that section, to read:

144 464.203 Certified nursing assistants; certification  
145 requirement.-

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146       (2) (a) 1. Except as provided in ss. 408.809, 435.04, and  
147 456.0635, the criminal history of an applicant may not be used  
148 as grounds for denial of a certificate to practice as a  
149 certified nursing assistant if the date of conviction, plea,  
150 adjudication, or sentencing is more than 3 years before the date  
151 of the application.

152       2. Except as provided in ss. 408.809, 435.07(4), and  
153 456.0635, the criminal history of an applicant may not be used  
154 as grounds for failure of a required background screening if the  
155 date of conviction, plea, adjudication, or sentencing is more  
156 than 3 years before the date of the application.

157       (b) 1. A person may apply for a certificate to practice as a  
158 certified nursing assistant before his or her lawful release  
159 from confinement or supervision. The department may not charge  
160 such an applicant an additional fee related to such confinement  
161 or supervision. The board may not deny an application for a  
162 certificate solely on the basis of the person's current  
163 confinement or supervision.

164       2. After a certification application is approved, the board  
165 may stay the issuance of a certificate until the applicant is  
166 lawfully released from confinement or supervision and until the  
167 applicant notifies the board of such release. The board must  
168 verify the applicant's release with the Department of  
169 Corrections before it issues a certificate.

170       3. If an applicant is unable to appear in person due to his  
171 or her confinement or supervision, the board must allow the  
172 applicant to appear by teleconference or video conference, as  
173 appropriate, at any meeting of the board or other hearing by the  
174 department concerning his or her application.

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175 4. If an applicant is confined or under supervision, the  
176 Department of Corrections and the board shall cooperate and  
177 coordinate to facilitate the appearance of the applicant at a  
178 board meeting or department hearing in person, by  
179 teleconference, or by video conference, as appropriate.

180 (c) By October 1, 2019, the board shall compile and post on  
181 the department's website a list of crimes that, if committed and  
182 regardless of adjudication, do not relate to the practice of the  
183 profession or the ability to practice the profession and do not  
184 constitute grounds for denial of a certificate. This list must  
185 be updated annually by the board. In addition, as of that date,  
186 the board shall begin to compile separate lists of such crimes  
187 that, when reported by an applicant for licensure, were and were  
188 not used as a basis for denial in the past 2 years. The lists,  
189 which must be available on the department's website and updated  
190 at least quarterly by the board, must identify for each such  
191 approval or denial of license the crime reported and the date of  
192 conviction, plea, adjudication, or sentencing.

193 Section 3. Subsection (4) of section 400.211, Florida  
194 Statutes, is amended to read:

195 400.211 Persons employed as nursing assistants;  
196 certification requirement.—

197 (4) When employed by a nursing home facility for a 12-month  
198 period or longer, a nursing assistant, to maintain  
199 certification, shall submit to a performance review every 12  
200 months and must receive regular inservice education based on the  
201 outcome of such reviews. The inservice training must meet all of  
202 the following requirements:

203 (a) Be sufficient to ensure the continuing competence of

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204 nursing assistants and must meet the standard specified in s.  
205 464.203(8). ~~s. 464.203(7);~~

206 (b) Include, at a minimum:

207 1. Techniques for assisting with eating and proper feeding;

208 2. Principles of adequate nutrition and hydration;

209 3. Techniques for assisting and responding to the  
210 cognitively impaired resident or the resident with difficult  
211 behaviors;

212 4. Techniques for caring for the resident at the end-of-  
213 life; and

214 5. Recognizing changes that place a resident at risk for  
215 pressure ulcers and falls. ~~;~~ ~~and~~

216 (c) Address areas of weakness as determined in nursing  
217 assistant performance reviews and may address the special needs  
218 of residents as determined by the nursing home facility staff.

219

220 Costs associated with this training may not be reimbursed from  
221 additional Medicaid funding through interim rate adjustments.

222 Section 4. This act shall take effect October 1, 2019.

**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.)

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Prepared By: The Professional Staff of the Committee on Innovation, Industry, and Technology

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**BILL:** CS/SB 536

**INTRODUCER:** Innovation, Industry, and Technology Committee and Senators Brandes and Perry

**SUBJECT:** 911 Services

**DATE:** March 12, 2019      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Imhof	IT	Fav/CS
2.			IS	
3.			AP	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 536 requires each county to develop a countywide implementation plan for text-to-911 services and, by January 1, 2022, to have a system in place to receive Enhanced 911 (E911) messages from providers.

The bill requires the Technology Program (office) within the Department of Management Services (department) to develop and implement, by January 1, 2020, a plan to require that a 911 public safety telecommunicator be able to transfer an emergency call from one local, multijurisdictional, or regional E911 system to another within this state when deemed prudent and requested by a caller or when deemed necessary. In developing and implementing this plan, the office is required to:

- Coordinate with public agencies to identify and resolve any technological or logistical issues;
- Identify or establish a system or clearinghouse for maintaining contact information for all E911 systems in this state; and
- Establish a date, considering any technological, logistical, financial, or other identified issues, by which all E911 systems in this state must be able to transfer emergency calls.

The bill addresses the Marjory Stoneman Douglas High School Public Safety Commission's recommendations by requiring that all local governments and first responders develop and implement communications systems allowing direct radio communication between 911 public safety answering points and first responders.



The bill is expected to increase the costs incurred by state and local governments by significant but indeterminate amounts. The local government cost increases may trigger the mandates provisions of the State Constitution, requiring a legislative determination that the law fulfills an important state interest and approval by two-thirds of the membership in each house of the Legislature. The bill sets out legislative findings relating to the important state interest regarding the ability to transfer emergency calls from one 911 system to another. It does not contain any such finding regarding E911 text messages or direct radio communication between 911 public safety answering points and first responders.

The bill takes effect July 1, 2019.

## II. Present Situation:

The Technology Program (office) within the Department of Management Services (department) oversees the E911 system in Florida.<sup>1</sup> The office is required to develop, maintain, and implement appropriate modifications for a statewide emergency communications E911 system plan. The plan must provide for:

- The public agency emergency communications requirements for each entity of local government<sup>2</sup> in the state.
- A system to meet specific local government requirements. The system is required to include law enforcement, firefighting, and emergency medical services and may include other emergency services such as poison control, suicide prevention, and emergency management services.
- Identification of the mutual aid agreements necessary to obtain an effective E911 system.
- A funding provision that identifies the cost necessary to implement the E911 system.

The office is responsible for the implementation and coordination of the plan, and must adopt any necessary rules and schedules related to public agencies<sup>3</sup> for implementing and coordinating the plan.

In 2007, the Florida Legislature established the E911 Board, which is composed of eleven members. The secretary of the department designates the chair of the E911 Board. The Governor appoints five members who are county 911 coordinators and five members from the telecommunications industry. The E911 Board's primary function is to administer the funds derived from a monthly fee on each subscriber with a Florida billing address (place of primary use). The E911 Board makes disbursements from the Wireless Emergency Telephone System Trust Fund to county governments and wireless providers in accordance with s. 365.173, F.S.

The Secretary of the department, or his or her designee, is the director of the statewide emergency communications number E911 system and is authorized to coordinate the activities of

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<sup>1</sup> Section 365.171, F.S.

<sup>2</sup> The term "local government" means any city, county, or political subdivision of the state and its agencies. Section 365.171(3)(b), F.S.

<sup>3</sup> The term "public agency" means the state and any city, county, city and county, municipal corporation, chartered organization, public district, or public authority located in whole or in part within this state which provides, or has authority to provide, firefighting, law enforcement, ambulance, medical, or other emergency services. Section 365.171(3)(c), F.S.

the system with state, county, local, and private agencies. In implementing the system, the director must consult, cooperate, and coordinate with local law enforcement agencies.

Section 365.176(6), F.S., permits the formation of multijurisdictional or regional systems, and any system established pursuant to the section may include the jurisdiction, or any portion thereof, of more than one public agency.

Within the E911 system, public safety answering points (PSAPs) are the public safety agencies<sup>4</sup> that receive incoming 911 requests for assistance and dispatch appropriate public safety agencies to respond to the requests in accordance with the state E911 plan.<sup>5</sup>

The Marjory Stoneman Douglas High School Public Safety Commission reviewed 911 and first responder dispatch communications on February 14, 2018, related to the shootings at the high school.<sup>6</sup> The commission found the City of Parkland's public safety services were provided through contracts with two separate agencies, the Broward County Sheriff's Office and Coral Springs/Parkland Fire Rescue, and Parkland's decision to contract with both agencies for its police and fire/EMS services caused issues with inter-agency communications interoperability and 911 call routing. The commission made the following recommendations to address these issues:

- Law enforcement agencies should be required to have communications interoperability with all other law enforcement agencies in their county. The methodology for accomplishing this is immaterial, but interoperability is essential.
- If a law enforcement agency asks another law enforcement agency for access to its primary dispatch radio channels, honoring the request should be mandatory.
- Law enforcement agencies should tactically train their personnel so they are familiar with all radio functionality.
- Florida law should require that all primary 911 call centers have the ability to directly communicate via radio with the first responder units for which they are receiving 911 calls without having to transfer calls.
- All public safety agencies should work toward consolidation of 911 call centers and eliminate the 911 call transfer process.
- School districts and law enforcement agencies should strive for radio interoperability.

### III. Effect of Proposed Changes:

The bill amends s. 365.172, F.S., to require each county to develop a countywide implementation plan for text-to-911 services and, by January 1, 2022, have in place a system to receive E911 text messages from providers.

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<sup>4</sup> "Public safety agency" means a functional division of a public agency which provides firefighting, law enforcement, medical, or other emergency services. Section 365.172(3)(x), F.S.

<sup>5</sup> Section 365.172(3)(y), F.S.

<sup>6</sup> Marjory Stoneman Douglas High School Public Safety Commission, *Initial Report Submitted to the Governor, Speaker of the House of Representatives, and Senate President*, (January 2, 2019), available at <http://www.fdle.state.fl.us/MSDHS/CommissionReport.pdf> (last accessed March 12, 2019). This subject is addressed in Chapter 7 on incident communications, interoperability and 911, radio, and computer-aided dispatch (CAD) systems, pages 215-230.

The bill creates s. 365.177, F.S., to require the Technology Program within the Department of Management Services to develop and implement a plan by January 1, 2020, to require that a 911 public safety telecommunicator be able to transfer an emergency call from one local, multijurisdictional, or regional E911 system to another local, multijurisdictional, or regional E911 system in this state, when deemed prudent and requested by a caller or when deemed necessary. In developing and implementing this plan, the office is required to:

- Coordinate with public agencies to identify and resolve any technological or logistical issues in implementing this requirement;
- Identify or establish a system or clearinghouse for maintaining contact information for all E911 systems in this state; and
- Establish a date, considering any technological, logistical, financial, or other identified issues, by which all E911 systems in this state must be able to transfer emergency calls as required.

The bill sets out legislative findings that appear to relate to only the call-transfer portion of the bill. There is an important state interest in ensuring that 911 telecommunications are routed to the most appropriate 911 system in the most expeditious manner possible in order to protect public safety. A proper and legitimate state purpose is served when local government 911 public safety telecommunicators are able to transfer and receive transfers of emergency calls from other local, multijurisdictional, or regional E911 systems in this state. Therefore, the Legislature finds and declares that this act fulfills an important state interest.

The bill creates s. 365.179, F.S., to address the Marjory Stoneman Douglas High School Public Safety Commission's recommendations and provide for direct radio communication between 911 public safety answering points and first responders. It creates the following definitions:

- "911 public safety answering point" or "PSAP" means a municipal or county emergency communications call center in this state which receives cellular, landline, or text 911 communications; and
- "First responders" includes the law enforcement agencies, fire service agencies, and emergency management services providers that are designated as first responders for the service area in which a PSAP receives 911 calls.

The bill establishes the following requirements.

- Each PSAP must be able to directly communicate by radio with first responders.
- Each sheriff must enter into a written agreement with each first responder in his or her county to establish protocols under which a PSAP that does not dispatch calls for a first responder agency will directly notify the first responder agency's on-duty personnel of an emergency by radio.
- Each PSAP must install, in at least one dispatch console within its emergency communications center, the primary radio dispatch channels of each first responder in the county it serves. If there are multiple PSAPs in a county, each PSAP must have this capability.
- Each law enforcement agency head must, upon the written request of another law enforcement agency head in the same county or an adjoining jurisdiction in another county, authorize the requesting agency to install the other agency's primary dispatch channel or channels in the requesting agency's mobile or portable radios.

- Each sheriff must, by January 1, 2020, certify in writing to the Department of Law Enforcement that all PSAPs in his or her county are in compliance with these requirements.

The bill takes take effect July 1, 2019.

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

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

Article VII, s. 18(a) of the State Constitution provides, in pertinent part, that “no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest and the law requiring such expenditure is approved by two-thirds of the membership in each house of the Legislature.”

The bill requires:

- The development and implementation of a plan requiring 911 public safety telecommunicators to be able to transfer and receive transfers of emergency calls from other local, multijurisdictional, or regional E911 systems in the state under certain circumstances;
- The development and implementation of a plan requiring a text-to-911 service countywide; and
- The development and implementation of communications systems that allow direct radio communication between 911 public safety answering points and first responders.

The bill states that ensuring 911 telecommunications are routed to the most appropriate 911 systems in the most expeditious manner possible in order to protect public safety fulfills an important state interest. No such legislative declaration related to the text-to-911 service is included or the direct radio communication between 911 public safety answering points and first responders.

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

None.

##### **C. Trust Funds Restrictions:**

None.

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

Section 19, Art. VII of the State Constitution limits the authority of the legislature to enact legislation that imposes or raises a state tax or fee by requiring such legislation to be approved by a 2/3 vote of each chamber of the legislature. Such state tax or fee imposed, authorized, or raised must be contained in a separate bill that contains no other subject.

For purposes of this limitation, the term “fee” is defined, in pertinent part, to mean any charge or payment required by law, including any fee for service . . . and charge for service.

This bill requires:

- Each county to develop and implement a countywide plan for a system to receive E911 text messages;
- Requires the state to develop and implement a plan to require that a 911 public safety telecommunicator be able to transfer and receive an emergency call from one local, multijurisdictional, or regional E911 system to another; and
- Requires that all local government emergency communications call centers and first responders develop and implement communications systems allowing direct radio communication between 911 public safety answering points and first responders.

All of these requirements are expected to increase costs incurred by state and local governments by a significant but indeterminate amount, which may require an increase in taxes or fees to create a source of revenue to implement.

**E. Other Constitutional Issues:**

None.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

All of the bill’s requirements are expected to increase costs incurred by state and local governments by a significant but indeterminate amount, which may require an increase in taxes or fees to create a source of revenue to implement.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

All of the bill’s requirements are expected to increase costs incurred by state and local governments by a significant but indeterminate amount, which may require an increase in taxes or fees to create a source of revenue to implement.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 365.172 of the Florida Statutes.

This bill creates sections 365.177 and 365.179 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 Innovation, Industry, and Technology on March 12, 2019:**

The committee substitute addresses the Marjory Stoneman Douglas High School Public Safety Commission's recommendations by requiring that all local governments and first responders develop and implement communications systems allowing direct radio communication between 911 public safety answering points and first responders.

- B. **Amendments:**

None.



184002

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/13/2019	.	
	.	
	.	
	.	

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The Committee on Innovation, Industry, and Technology (Brandes) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 249 and 250

insert:

Section 4. Section 365.179, Florida Statutes, is created to read:

365.179 Direct radio communication between 911 public safety answering points and first responders.—

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

(a) "First responders" includes the law enforcement



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11 agencies, fire service agencies, and emergency management  
12 services providers that are designated as first responders for  
13 the service area in which a PSAP receives 911 calls.

14 (b) "911 public safety answering point" or "PSAP" means a  
15 municipal or county emergency communications call center in this  
16 state which receives cellular, landline, or text 911  
17 communications.

18 (2) A PSAP must be able to directly communicate by radio  
19 with first responders. The PSAP must be able to make such  
20 communication without having to transfer a 911 call or having to  
21 relay information received during a 911 call to another PSAP or  
22 emergency communications center for dispatch.

23 (3) In collaboration with all first responders in his or  
24 her county, each sheriff shall enter into a written agreement  
25 with each first responder to establish protocols under which a  
26 PSAP that does not dispatch calls for a first responder agency  
27 will directly notify the first responder agency's on-duty  
28 personnel of an emergency by radio. The agreement must require  
29 the PSAP to be able to communicate with the personnel without  
30 having to transfer the 911 call for dispatch to that agency or  
31 having to relay the information received during a 911 call by  
32 telephone or other indirect means.

33 (4) Each PSAP shall install, in at least one dispatch  
34 console within its emergency communications center, the primary  
35 radio dispatch channels of each first responder in the county it  
36 serves. If there are multiple PSAPs in a county, each PSAP must  
37 have this capability.

38 (5) Upon the written request of a law enforcement agency  
39 head, any other law enforcement agency head in the same county





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40 or an adjoining jurisdiction in another county shall authorize  
41 the requesting agency to install the other agency's primary  
42 dispatch channel or channels in the requesting agency's mobile  
43 or portable radios.

44 (6) By January 1, 2020, each county sheriff shall certify  
45 in writing to the Department of Law Enforcement that all PSAPs  
46 in his or her county are in compliance with this section.

47  
48 ===== T I T L E A M E N D M E N T =====

49 And the title is amended as follows:

50 Delete line 13

51 and insert:

52 interest; creating s. 365.179, F.S.; defining the  
53 terms "first responders" and "911 public safety  
54 answering point" or "PSAP"; requiring a PSAP to be  
55 able to directly communicate by radio with first  
56 responders; requiring each sheriff, in collaboration  
57 with first responders in his or her county, to enter  
58 into specified written agreements; requiring each PSAP  
59 to install local first responder radio dispatch  
60 channels in its emergency communications center;  
61 requiring a law enforcement agency head to authorize  
62 the installation of his or her agency's primary  
63 dispatch channel or channels on certain other law  
64 enforcement agency's mobile or portable radios, upon  
65 request; requiring each county sheriff to certify  
66 compliance in writing with the Department of Law  
67 Enforcement by a specified date; providing an  
68 effective date.



The Florida Senate

## Committee Agenda Request

**To:** Senator Wilton Simpson  
Committee on Innovation, Industry, and  
Technology

**Subject:** Committee Agenda Request

**Date:** February 8, 2019

---

I respectfully request that **Senate Bill #536**, relating to **911 Services**, be placed on the:

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

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

Senator Jeff Brandes  
Florida Senate, District 24

THE FLORIDA SENATE

APPEARANCE RECORD

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

MARCH 12, 2019

Meeting Date

SB 536

Bill Number (if applicable)

\*184002

Amendment Barcode (if applicable)

Topic SB 536 - 911 systems

Name Ray Colburn

Job Title Executive Director

Address 221 Pinewood Dr.

Street

Phone 407-418-6622

Tallahassee FL 32303

City

State

Zip

Email ray@ffca.org

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

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

Representing FLORIDA Fire Chiefs' Association

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

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

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/12/19

Meeting Date

536

Bill Number (if applicable)

184002

Amendment Barcode (if applicable)

Topic 9/11 Services

Name Jim Milligan

Job Title Division Chief

Address 4360-55 AV N

Street

Phone 727-526-5650

ST. Petersburg FL 33714

City

State

Zip

Email milligan@ecfmentfire.com

Speaking: [ ] For [ ] Against [ ] Information

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

Representing Florida Fire chiefs Association

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

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

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

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

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

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

3.12.19

*Meeting Date*

536

*Bill Number (if applicable)*

Topic 911 Services

*Amendment Barcode (if applicable)*

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

*Street*

Tallahassee

FL

32308

Email barney@barneybishop.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida Smrt Justice Alliance

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

### The Florida Senate COMMITTEE VOTE RECORD

**COMMITTEE:** Innovation, Industry, and Technology  
**ITEM:** SB 536  
**FINAL ACTION:** Favorable with Committee Substitute  
**MEETING DATE:** Tuesday, March 12, 2019  
**TIME:** 1:30—3:30 p.m.  
**PLACE:** 110 Senate Building

FINAL VOTE		SENATORS	3/12/2019 Amendment 184002 <sup>1</sup>		Yea	Nay	Yea	Nay
Yea	Nay		Yea	Nay				
		Bracy						
X		Bradley						
X		Brandes						
X		Braynon						
X		Farmer						
X		Gibson						
X		Hutson						
X		Passidomo						
X		Benacquisto, VICE CHAIR						
X		Simpson, CHAIR						
9	0	<b>TOTALS</b>	RCS	-				
<b>Yea</b>	<b>Nay</b>		<b>Yea</b>	<b>Nay</b>	<b>Yea</b>	<b>Nay</b>	<b>Yea</b>	<b>Nay</b>

CODES: FAV=Favorable    RCS=Replaced by Committee Substitute    TP=Temporarily Postponed    WD=Withdrawn  
 UNF=Unfavorable    RE=Replaced by Engrossed Amendment    VA=Vote After Roll Call    OO=Out of Order  
 -R=Reconsidered    RS=Replaced by Substitute Amendment    VC=Vote Change After Roll Call    AV=Abstain from Voting

**By** the Committee on Innovation, Industry, and Technology; and  
Senators Brandes and Perry

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1                                   A bill to be entitled  
2       An act relating to 911 services; amending s. 365.172,  
3       F.S.; revising the applicability of definitions;  
4       requiring counties to develop a plan for implementing  
5       a text-to-911 system and to implement a system to  
6       receive E911 text messages by a specified date;  
7       creating s. 365.177, F.S.; requiring that the  
8       Technology Program within the Department of Management  
9       Services develop and implement a plan to require that  
10      emergency dispatchers be able to transfer an emergency  
11      call from one E911 system to another E911 system in  
12      this state; providing a declaration of important state  
13      interest; creating s. 365.179, F.S.; defining the  
14      terms "first responders" and "911 public safety  
15      answering point" or "PSAP"; requiring a PSAP to be  
16      able to directly communicate by radio with first  
17      responders; requiring each sheriff, in collaboration  
18      with first responders in his or her county, to enter  
19      into specified written agreements; requiring each PSAP  
20      to install local first responder radio dispatch  
21      channels in its emergency communications center;  
22      requiring a law enforcement agency head to authorize  
23      the installation of his or her agency's primary  
24      dispatch channel or channels on certain other law  
25      enforcement agency's mobile or portable radios, upon  
26      request; requiring each county sheriff to certify  
27      compliance in writing with the Department of Law  
28      Enforcement by a specified date; providing an  
29      effective date.

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

Section 1. Present subsection (15) of section 365.172, Florida Statutes, is redesignated as subsection (16), a new subsection (15) is added to that section, and subsection (3) of that section is amended, to read:

365.172 Emergency communications number "E911."—

(3) DEFINITIONS.—Only as used in this section and ss. 365.171, 365.173, ~~and~~ 365.174, and 365.177, the term:

(a) "Authorized expenditures" means expenditures of the fee, as specified in subsection (10).

(b) "Automatic location identification" means the capability of the E911 service which enables the automatic display of information that defines the approximate geographic location of the wireless telephone, or the location of the address of the wireline telephone, used to place a 911 call.

(c) "Automatic number identification" means the capability of the E911 service which enables the automatic display of the service number used to place a 911 call.

(d) "Board" or "E911 Board" means the board of directors of the E911 Board established in subsection (5).

(e) "Building permit review" means a review for compliance with building construction standards adopted by the local government under chapter 553 and does not include a review for compliance with land development regulations.

(f) "Collocation" means the situation when a second or subsequent wireless provider uses an existing structure to locate a second or subsequent antennae. The term includes the



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59 ground, platform, or roof installation of equipment enclosures,  
60 cabinets, or buildings, and cables, brackets, and other  
61 equipment associated with the location and operation of the  
62 antennae.

63 (g) "Designed service" means the configuration and manner  
64 of deployment of service the wireless provider has designed for  
65 an area as part of its network.

66 (h) "Enhanced 911" or "E911" means an enhanced 911 system  
67 or enhanced 911 service that is an emergency telephone system or  
68 service that provides a subscriber with 911 service and, in  
69 addition, directs 911 calls to appropriate public safety  
70 answering points by selective routing based on the geographical  
71 location from which the call originated, or as otherwise  
72 provided in the state plan under s. 365.171, and that provides  
73 for automatic number identification and automatic location-  
74 identification features. E911 service provided by a wireless  
75 provider means E911 as defined in the order.

76 (i) "Existing structure" means a structure that exists at  
77 the time an application for permission to place antennae on a  
78 structure is filed with a local government. The term includes  
79 any structure that can structurally support the attachment of  
80 antennae in compliance with applicable codes.

81 (j) "Fee" means the E911 fee authorized and imposed under  
82 subsections (8) and (9).

83 (k) "Fund" means the Emergency Communications Number E911  
84 System Fund established in s. 365.173 and maintained under this  
85 section for the purpose of recovering the costs associated with  
86 providing 911 service or E911 service, including the costs of  
87 implementing the order. The fund shall be segregated into

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88 wireless, prepaid wireless, and nonwireless categories.

89 (l) "Historic building, structure, site, object, or  
90 district" means any building, structure, site, object, or  
91 district that has been officially designated as a historic  
92 building, historic structure, historic site, historic object, or  
93 historic district through a federal, state, or local designation  
94 program.

95 (m) "Land development regulations" means any ordinance  
96 enacted by a local government for the regulation of any aspect  
97 of development, including an ordinance governing zoning,  
98 subdivisions, landscaping, tree protection, or signs, the local  
99 government's comprehensive plan, or any other ordinance  
100 concerning any aspect of the development of land. The term does  
101 not include any building construction standard adopted under and  
102 in compliance with chapter 553.

103 (n) "Local exchange carrier" means a "competitive local  
104 exchange telecommunications company" or a "local exchange  
105 telecommunications company" as defined in s. 364.02.

106 (o) "Local government" means any municipality, county, or  
107 political subdivision or agency of a municipality, county, or  
108 political subdivision.

109 (p) "Medium county" means any county that has a population  
110 of 75,000 or more but less than 750,000.

111 (q) "Mobile telephone number" or "MTN" means the telephone  
112 number assigned to a wireless telephone at the time of initial  
113 activation.

114 (r) "Nonwireless category" means the revenues to the fund  
115 received from voice communications services providers other than  
116 wireless providers.

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117 (s) "Office" means the Technology Program within the  
118 Department of Management Services, as designated by the  
119 secretary of the department.

120 (t) "Order" means:

121 1. The following orders and rules of the Federal  
122 Communications Commission issued in FCC Docket No. 94-102:

123 a. Order adopted on June 12, 1996, with an effective date  
124 of October 1, 1996, the amendments to s. 20.03 and the creation  
125 of s. 20.18 of Title 47 of the Code of Federal Regulations  
126 adopted by the Federal Communications Commission pursuant to  
127 such order.

128 b. Memorandum and Order No. FCC 97-402 adopted on December  
129 23, 1997.

130 c. Order No. FCC DA 98-2323 adopted on November 13, 1998.

131 d. Order No. FCC 98-345 adopted December 31, 1998.

132 2. Orders and rules subsequently adopted by the Federal  
133 Communications Commission relating to the provision of 911  
134 services, including Order Number FCC-05-116, adopted May 19,  
135 2005.

136 (u) "Prepaid wireless category" means all revenues in the  
137 fund received through the Department of Revenue from the fee  
138 authorized and imposed under subsection (9).

139 (v) "Prepaid wireless service" means a right to access  
140 wireless service that allows a caller to contact and interact  
141 with 911 to access the 911 system, which service must be paid  
142 for in advance and is sold in predetermined units or dollars,  
143 which units or dollars expire on a predetermined schedule or are  
144 decremented on a predetermined basis in exchange for the right  
145 to access wireless service.

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146 (w) "Public agency" means the state and any municipality,  
147 county, municipal corporation, or other governmental entity,  
148 public district, or public authority located in whole or in part  
149 within this state which provides, or has authority to provide,  
150 firefighting, law enforcement, ambulance, medical, or other  
151 emergency services.

152 (x) "Public safety agency" means a functional division of a  
153 public agency which provides firefighting, law enforcement,  
154 medical, or other emergency services.

155 (y) "Public safety answering point," "PSAP," or "answering  
156 point" means the public safety agency that receives incoming 911  
157 requests for assistance and dispatches appropriate public safety  
158 agencies to respond to the requests in accordance with the state  
159 E911 plan.

160 (z) "Rural county" means any county that has a population  
161 of fewer than 75,000.

162 (aa) "Service identifier" means the service number, access  
163 line, or other unique identifier assigned to a subscriber and  
164 established by the Federal Communications Commission for  
165 purposes of routing calls whereby the subscriber has access to  
166 the E911 system.

167 (bb) "Tower" means any structure designed primarily to  
168 support a wireless provider's antennae.

169 (cc) "Voice communications services" means two-way voice  
170 service, through the use of any technology, which actually  
171 provides access to E911 services, and includes communications  
172 services, as defined in s. 202.11, which actually provide access  
173 to E911 services and which are required to be included in the  
174 provision of E911 services pursuant to orders and rules adopted

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175 by the Federal Communications Commission. The term includes  
176 voice-over-Internet-protocol service. For the purposes of this  
177 section, the term "voice-over-Internet-protocol service" or  
178 "VoIP service" means interconnected VoIP services having the  
179 following characteristics:

180 1. The service enables real-time, two-way voice  
181 communications;

182 2. The service requires a broadband connection from the  
183 user's locations;

184 3. The service requires IP-compatible customer premises  
185 equipment; and

186 4. The service offering allows users generally to receive  
187 calls that originate on the public switched telephone network  
188 and to terminate calls on the public switched telephone network.

189 (dd) "Voice communications services provider" or "provider"  
190 means any person or entity providing voice communications  
191 services, except that the term does not include any person or  
192 entity that resells voice communications services and was  
193 assessed the fee authorized and imposed under subsection (8) by  
194 its resale supplier.

195 (ee) "Wireless 911 system" or "wireless 911 service" means  
196 an emergency telephone system or service that provides a  
197 subscriber with the ability to reach an answering point by  
198 accessing the digits 911.

199 (ff) "Wireless category" means the revenues to the fund  
200 received from a wireless provider from the fee authorized and  
201 imposed under subsection (8).

202 (gg) "Wireless communications facility" means any equipment  
203 or facility used to provide service and may include, but is not

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204 limited to, antennae, towers, equipment enclosures, cabling,  
205 antenna brackets, and other such equipment. Placing a wireless  
206 communications facility on an existing structure does not cause  
207 the existing structure to become a wireless communications  
208 facility.

209 (hh) "Wireless provider" means a person who provides  
210 wireless service and:

- 211 1. Is subject to the requirements of the order; or
- 212 2. Elects to provide wireless 911 service or E911 service  
213 in this state.

214 (ii) "Wireless service" means "commercial mobile radio  
215 service" as provided under ss. 3(27) and 332(d) of the Federal  
216 Telecommunications Act of 1996, 47 U.S.C. ss. 151 et seq., and  
217 the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-  
218 66, August 10, 1993, 107 Stat. 312. The term includes service  
219 provided by any wireless real-time two-way wire communication  
220 device, including radio-telephone communications used in  
221 cellular telephone service; personal communications service; or  
222 the functional or competitive equivalent of a radio-telephone  
223 communications line used in cellular telephone service, a  
224 personal communications service, or a network radio access line.  
225 The term does not include wireless providers that offer mainly  
226 dispatch service in a more localized, noncellular configuration;  
227 providers offering only data, one-way, or stored-voice services  
228 on an interconnected basis; providers of air-to-ground services;  
229 or public coast stations.

230 (15) TEXT-TO-911 SERVICE.—Each county shall develop a  
231 countywide implementation plan for text-to-911 services and, by  
232 January 1, 2022, have in place a system to receive E911 text

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233 messages from providers.

234 Section 2. Section 365.177, Florida Statutes, is created to  
235 read:

236 365.177 Transfer of E911 calls between systems.-

237 (1) The office shall develop and implement a plan by  
238 January 1, 2020, to require that a 911 public safety  
239 telecommunicator, when deemed prudent and requested by a caller  
240 or when deemed necessary, be able to transfer an emergency call  
241 from one local, multijurisdictional, or regional E911 system to  
242 another local, multijurisdictional, or regional E911 system in  
243 this state.

244 (2) In developing and implementing this plan, the office  
245 shall:

246 (a) Coordinate with public agencies to identify and resolve  
247 any technological or logistical issues in implementing this  
248 section.

249 (b) Identify or establish a system or clearinghouse for  
250 maintaining contact information for all E911 systems in this  
251 state.

252 (c) Establish a date, considering any technological,  
253 logistical, financial, or other identified issues, by which all  
254 E911 systems in this state must be able to transfer emergency  
255 calls pursuant to subsection (1).

256 Section 3. The Legislature finds that there is an important  
257 state interest in ensuring that 911 telecommunications are  
258 routed to the most appropriate 911 system in the most  
259 expeditious manner possible in order to protect public safety.  
260 Thus, a proper and legitimate state purpose is served when local  
261 government 911 public safety telecommunicators are able to

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262 transfer and receive transfers of emergency calls from other  
263 local, multijurisdictional, or regional E911 systems in this  
264 state. Therefore, the Legislature finds and declares that this  
265 act fulfills an important state interest.

266 Section 4. Section 365.179, Florida Statutes, is created to  
267 read:

268 365.179 Direct radio communication between 911 public  
269 safety answering points and first responders.-

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

271 (a) "First responders" includes the law enforcement  
272 agencies, fire service agencies, and emergency management  
273 services providers that are designated as first responders for  
274 the service area in which a PSAP receives 911 calls.

275 (b) "911 public safety answering point" or "PSAP" means a  
276 municipal or county emergency communications call center in this  
277 state which receives cellular, landline, or text 911  
278 communications.

279 (2) A PSAP must be able to directly communicate by radio  
280 with first responders. The PSAP must be able to make such  
281 communication without having to transfer a 911 call or having to  
282 relay information received during a 911 call to another PSAP or  
283 emergency communications center for dispatch.

284 (3) In collaboration with all first responders in his or  
285 her county, each sheriff shall enter into a written agreement  
286 with each first responder to establish protocols under which a  
287 PSAP that does not dispatch calls for a first responder agency  
288 will directly notify the first responder agency's on-duty  
289 personnel of an emergency by radio. The agreement must require  
290 the PSAP to be able to communicate with the personnel without



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291 having to transfer the 911 call for dispatch to that agency or  
292 having to relay the information received during a 911 call by  
293 telephone or other indirect means.

294 (4) Each PSAP shall install, in at least one dispatch  
295 console within its emergency communications center, the primary  
296 radio dispatch channels of each first responder in the county it  
297 serves. If there are multiple PSAPs in a county, each PSAP must  
298 have this capability.

299 (5) Upon the written request of a law enforcement agency  
300 head, any other law enforcement agency head in the same county  
301 or an adjoining jurisdiction in another county shall authorize  
302 the requesting agency to install the other agency's primary  
303 dispatch channel or channels in the requesting agency's mobile  
304 or portable radios.

305 (6) By January 1, 2020, each county sheriff shall certify  
306 in writing to the Department of Law Enforcement that all PSAPs  
307 in his or her county are in compliance with this section.

308 Section 5. This act shall take effect July 1, 2019.

**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.)

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Prepared By: The Professional Staff of the Committee on Innovation, Industry, and Technology

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BILL: CS/SB 1000

INTRODUCER: Innovation, Industry, and Technology Committee and Senator Hutson

SUBJECT: Communications Services Taxes

DATE: March 12, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Imhof	IT	Fav/CS
2.			FT	
3.			AP	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1000 reduces the state tax on general communications services from 4.92 percent to 3.92 percent, and on direct-to-home satellite services from 9.02 percent to 8.07 percent.

Municipalities and counties that, as of January 1, 2019, were not imposing permit fees cannot reverse this election and cannot impose permit fees. In contrast, municipalities and counties that were imposing permit fees as of that date may continue to do so or may elect to no longer impose permit fees. The bill retains existing provisions on fees and changes to elections applicable only to this latter group.

The makes extensive changes to the law on use of rights-of-way, including provisions on small and micro wireless infrastructure. These changes include:

- Creating a civil cause of action for any person aggrieved by a violation of the right-of-way statute in a U.S. District Court or in any other court of competent jurisdiction for a temporary or permanent injunction and recovery of full costs and reasonable attorney fees to a prevailing aggrieved party.
- Prohibiting a local government permitting authority from instituting, either expressly or de facto, a moratorium or other mechanism that would prohibit or delay permits for collocation of small wireless facilities or related poles.
- Deleting authority for a local government to require performance bonds and security funds and allowing them to require a construction bond limited to no more than 1 year after the construction is completed;

- Requiring a local government to accept a letter of credit or similar instrument issued by any financial institution authorized to do business within the U.S.; and
- Allowing a provider of communications services to add a permitting authority to any existing bond, insurance policy, or other financial instrument, and requiring the authority to accept such coverage.

The changes to the communications services tax (CST) rates made by the bill are to be applied to communications services reflected on bills dated on or after October 1, 2020.

The bill takes effect July 1, 2019.

## II. Present Situation:

Chapter 202, F.S., provides for the communication services tax, including telecommunications and cable, taxed at a rate of 4.92 percent, and direct-to-home satellite, taxed at a rate of 9.07 percent.<sup>1</sup> A portion of the state taxes collected – including taxes collected on direct-to-home satellite service – are deposited into the General Revenue Fund and a portion is distributed to local governments.<sup>2</sup>

Section 337.401(3)(c) and (j), F.S., provides for local government rights-of-way permit fees from any providers of communications services that use or occupy municipal or county roads or rights-of-way. All fees must be reasonable and commensurate with the direct and actual cost of the regulatory activity, including issuing and processing permits, plan reviews, physical inspection, and direct administrative costs; must be demonstrable; and must be equitable among users of the roads or rights-of-way. Fees may not: be offset against the communications services tax; include the costs of roads or rights-of-way acquisition or roads or rights-of-way rental; include any general administrative, management, or maintenance costs of the roads or rights-of-way; be based on a percentage of the value or costs associated with the work to be performed on the roads or rights-of-way; or not exceed \$100.

Each local government was required to make an election on whether to charge permit fees before July 16, 2001, and the impacts on CST rates were different for municipalities and charter counties as compared to noncharter counties.

The options for a municipality or charter county were: to require and collect permit fees, but reduce its communications services tax rate by 0.12 percent; or to elect not to charge permit fees and increase the CST rate by an amount not to exceed 0.12 percent. A municipality or charter county that did not make the required election was statutorily presumed to have elected not to require and collect permit fees.

In contrast, a noncharter county that elected to require and collect permit fees had no reduction in its CST rate, and a noncharter county that elected not to charge permit fees could increase its CST rate by an amount not to exceed a rate of 0.24 percent to replace the revenue the noncharter county would otherwise have received from permit fees for providers of communications services. A

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<sup>1</sup> Section 202.12(1)(a) and (b), F.S.

<sup>2</sup> Section 202.18, F.S.

noncharter county that did not make the required election was statutorily presumed to have elected not to require and collect permit fees.

Section 337.401(3)(j), F.S., allows a local government to change a previously selected option, with no limitation on the number of times a local government makes such a change. If a municipality or charter county changes its election in order to require and collect permit fees, its CST rate would automatically be reduced by 0.12 percent plus the percentage, if any, by which the rate was previously increased due to the previous election. If a municipality or charter county changes its election in order to discontinue requiring and collecting permit fees, its CST rate could be increased by an amount not to exceed 0.24 percent.

If a noncharter county changes its election in order to require and collect permit fees, its CST rate would automatically be reduced by the percentage, if any, by which such rate was increased due to the previous election. If a noncharter county changes its election in order to discontinue requiring and collecting permit fees, its CST rate could be increased by an amount not to exceed 0.24 percent.

### III. Effect of Proposed Changes:

**Section 1** amends s. 202.12, F.S., to reduce the state tax on general communications services from 4.92 percent to 3.92 percent, and on direct-to-home satellite from 9.02 percent to 8.07 percent.

**Section 2** amends s. 202.20, F.S., to conform a cross-reference.

**Section 3** amends s. 337.401, F.S. Municipalities and counties that, as of January 1, 2019, were not imposing permit fees cannot reverse this election and cannot impose permit fees. In contrast, municipalities and counties that were imposing permit fees as of that date may continue to do so or may elect to no longer impose permit fees. The bill retains existing provisions on fees and changes to elections applicable only to this latter group.

The bill makes extensive changes relating to use of rights-of-way and small and micro wireless infrastructure,<sup>3</sup> including the following changes.

- Current law contains a statement of legislative intent that local governments treat providers of communications services in a nondiscriminatory and competitively neutral manner. The bill requires local governments to take into account the distinct engineering, construction, operation, maintenance, public works and safety requirements of the provider's facilities when imposing rules or regulations governing the placement or maintenance of communications facilities in the public roads or rights-of-way.
- Current law allows a municipality or county to require a provider of communications services that places or seeks to place facilities in its roads or rights-of-way to register with the

<sup>3</sup> "Wireless facility" means equipment at a fixed location which enables wireless communications between user equipment and a communications network. The term includes radio transceivers, antennas, wires, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment. The term includes small wireless facilities.

"Small wireless facility" means a wireless facility for which each associated antenna associated is located inside, or could fit within, an enclosure of no more than 6 cubic feet in volume, and all other associated wireless equipment is cumulatively no more than 28 cubic feet in volume.

"Micro wireless facility" means a small wireless facility having dimensions no larger than 24 inches in length, 15 inches in width, and 12 inches in height and an exterior antenna, if any, no longer than 11 inches. s. 337.401(7)(b)12., 10., and 9., F.S., respectively.

municipality or county, and limits the types of information that may be required in registration to identification and location information and any required proof of insurance or self-insuring status adequate to defend and cover claims. The bill adds to this a prohibition against a local government requiring the provision of an inventory of communications facilities, maps, locations of such facilities or other information as a condition of registration, renewal, or for any purpose. It does allow a local government to require as part of a permit application that the applicant identify at-grade (ground level) communications facilities within 25 feet of the proposed installation location for the placement of at grade communications facilities. The bill also: prohibits requiring a provider to pay any fee, cost or other charge for registration or renewal; adoption or enforcement of any ordinances, regulations, or requirements as to the placement or operation of communications facilities in a right of way by a communications services provider; or imposition or collection of any tax or charge the provision of communications services over the communications services provider's communications facilities in a right of way.

- Current law prohibits imposition of permit fees for any activity that does not require the physical disturbance of the roads or rights-of-way or does not impair access to or full use of the roads or rights-of-way. The bill adds that this prohibition includes emergency repairs of existing lawfully placed facilities; extensions of existing lawfully placed facilities for providing communications services to customers; and the placement of micro wireless facilities suspended on cables between existing poles.
- Current law requires a local government to provide to the Secretary of State notice of a proposed ordinance governing a telecommunications company placing or maintaining facilities in its roads or rights-of-way within specified times. Failure to provide the notice does not render the ordinance invalid. The bill requires that, if notice was not provided, the ordinance must be suspended until the relevant local government provides the required notice and duly considers amendments from affected persons.
- Current law prohibits a local government from using its authority over the placement of facilities in its roads and rights-of-way as a basis for asserting or exercising regulatory control over a provider of communications services regarding matters within the exclusive jurisdiction of the Florida Public Service Commission or the Federal Communications Commission. The bill prohibits the local government from exercising control over equipment or technology used by a provider.
- The bill further prohibits a local government from requiring any permit for the installation, placement, maintenance or replacement of aerial wireline communications facilities on or between existing utility poles by a communications service provider. A local government may, however, require a right-of-way permit for work that involves excavation, closure of a sidewalk, or closure of a vehicular lane, unless the provider is making emergency restoration or repair work to existing lawfully placed facilities.
- It also requires that any permit application required for the placement of communications facilities be processed and acted upon consistent with specified timeframes which require an authority to determine whether an application is complete within 14 days after receiving it, notify the applicant of the determination by electronic mail, and if an application is deemed incomplete, specifically identify the missing information. If the authority fails to provide the notification within the required 14 days, the application is deemed complete. Additionally, a complete application is deemed approved if an authority fails to approve or deny the application within 60 days after receipt of the application. If the application is denied, the authority must specify in writing the basis for denial, including the specific code provisions on which the

denial was based, and the applicant has 30 days to cure the identified deficiencies. The authority must approve or deny the revised application within 30 days after receipt or the application is deemed approved. Finally, an authority cannot require any permit or other approval, fees, charges, costs or other exactions for the extension, routine maintenance and repair, replacement or upgrade of existing aerial or underground communications facilities located on private property outside of the public rights-of-way.

- Current law states that a local government may adopt or enforce reasonable rules or regulations concerning use of its rights-of-way. The bill requires that any such rules or regulations be in writing. It also requires that a local government give providers at least 60 days advance written notice before making any changes to the rules or regulations.
- Currently, for purposes of the Advanced Wireless Infrastructure Deployment Act, the definition of “applicable codes” includes provisions on “objective design standards,” or aesthetics. The significance of this is that an authority must approve a complete application unless it does not meet the authority’s applicable codes. If these aesthetic requirements are part of applicable codes, the aesthetic requirements must be met for approval of an application. The bill transfers the aesthetic requirements from the definition of “applicable codes” to subparagraph 337.401(7)(f)6. Currently, paragraph 337.401(7)(f) allows a permitting authority to deny a proposed collocation of a small wireless facility in the public rights-of-way if the proposed collocation meets one of a list of disqualifying criteria. The addition of objective design standards means that the permitting authority may deny a proposed collocation that does not meet these standards. The statute defines the term collocation” to mean “to install, mount, maintain, modify, operate, or replace one or more wireless facilities on, under, within, or adjacent to a wireless support structure or utility pole. The term does not include the installation of a new utility pole or wireless support structure in the public rights-of-way.” Thus, a service provider would have to meet objective design standards to locate a wireless facility on or adjacent to an existing utility pole or wireless support structure, but not to install a facility on a new pole or support structure.
- The current definition of “application” means a request submitted by an applicant to an authority for a permit “to collocate small wireless facilities.” The bill adds a request for a permit “to place a new utility pole used to support a small wireless facility,” thus requiring local governments to permit new poles.
- The bill changes the definition of “wireless support structure” to include a “pedestal or other support structure for ground based equipment not mounted on a utility pole and less than 10 feet in height,” thus requiring a local government to permit these support structures.
- Current law prohibits an authority from prohibiting, regulating, or charging for the collocation of small wireless facilities in public rights-of-way. The bill adds to this prohibition “the installation, maintenance, modification, operation or replacement of utility poles used for the collocation of small wireless facilities,” allowing installation of a utility pole without regulation or charge.
- Current law provides that an applicant for a permit for placement of small wireless facilities may not be required to provide more information than is necessary to demonstrate the applicant’s compliance with applicable codes. The bill adds a prohibition against requiring an applicant to provide inventories, maps, or locations of communications facilities in the right-of-way other than as necessary to avoid interference with other at-grade facilities located at the specific location proposed for a small wireless facility or within 25 feet of such location.

- Current law contains a list of prohibited local government actions, to which the bill adds:
  - Requiring a demonstration that collocation of a small wireless facility on an existing structure is not legally or technically possible as a condition for granting a permit for the collocation of a small wireless facility on a new utility pole;
  - Requiring compliance with an authority's provisions regarding placement of small wireless facilities or a new utility pole used to support a small wireless facility in rights-of-way not under the control of the authority pursuant to a delegation from the department, or require such compliance as a condition to receive a permit that is ancillary to the permit for collocation of a small wireless facility, including an electrical permit;
  - Requiring a meeting before filing an application;
  - Requiring direct or indirect public notification or a public meeting for the placement of communication facilities in the right-of-way;
  - Limiting the size or configuration of a small wireless facility or any of its components, if the small wireless facility complies with the stated size limits;
  - Prohibiting the installation of a new utility pole used to support the collocation of a small wireless facility if the installation otherwise meets the requirements of the subsection;
  - Requiring that any component of a small wireless facility be placed underground; or
  - Requiring that any existing communication facility be placed underground.
- Current law provides for review, approval, and denial of an application for a permit to use rights-of-way. The bill provides that the availability of any subsequent review by the permitting authority does not bar review of a denial in a court of competent jurisdiction.
- Current law allows a local government to require insurance, indemnification, performance bonds, or security funds. The bill deletes performance bonds and security funds and allows requiring a construction bond limited to no more than one year after the construction is completed. It also requires the local government to accept a letter of credit or similar financial instrument issued by any financial institution that is authorized to do business within the United States. The bill states that a provider of communications services may add an authority to any existing bond, insurance policy, or other relevant financial instrument, and the authority is required to accept such proof of coverage without any conditions. Finally, an authority may not require a communications services provider to indemnify it for liabilities not caused by the provider, including liabilities arising from the authority's negligence, gross negligence, or willful conduct.
- Current law contains size limitations for micro wireless facilities. The bill provides that an authority may require an initial letter from or on behalf of a provider attesting that the micro wireless facility dimensions comply with the limits but after that filing, the authority may not require any additional filing or other information as long as the provider is deploying the same or a substantially similar or smaller size micro wireless facility equipment.
- The bill prohibits a local government permitting authority from instituting, either expressly or de facto, a moratorium, zoning-in-progress, or other mechanism that would prohibit or delay the filing, receiving, or processing of registrations, applications, or issuing of permits or other approvals for the collocation of small wireless facilities or the installation, modification, or replacement of utility poles used to support the collocation of small wireless facilities.
- The bill creates a cause of action for any person aggrieved by a violation of the right-of-way statute. Any such person may bring a civil action in a U.S. District Court or any other court of competent jurisdiction and the court may grant temporary or permanent injunctions to prevent or restrain violations and direct the recovery of full costs, including awarding reasonable attorney fees, to an aggrieved party who prevails.

**Section 4** provides that the changes to the CST tax rates made by the bill are to be applied to communications services reflected in customers’ bills dated on or after October 1, 2020.

**Section 5** provides that the bill takes effect July 1, 2019.

**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:

The bill reduces the state tax on general communications services from 4.92 percent to 3.92 percent, and on direct-to-home satellite services from 9.02 percent to 8.07 percent.

The Revenue Estimating Conference met on February 15, 2019 and estimated the impact of SB 1000 and HB 693 for sections 1, 3, and 4, as indicated:

2019-20							
General Revenue		State Trust		Local/Other		Total	
Cash	Recurr	Cash	Recurr	Cash	Recurr	Cash	Recurr
0.0	(107.5)	0.0	(*)	0.0	(20.8)	0.0	(128.3)

2020-21							
General Revenue		State Trust		Local/Other		Total	
Cash	Recurr	Cash	Recurr	Cash	Recurr	Cash	Recurr
(71.8)	(107.6)	(*)	(*)	(14.0)	(21.0)	(85.8)	(128.6)



2021-22							
General Revenue		State Trust		Local/Other		Total	
Cash	Recurr	Cash	Recurr	Cash	Recurr	Cash	Recurr
(108.0)	(108.0)	(*)	(*)	(21.2)	(21.2)	(129.2)	(129.2)

2022-23							
General Revenue		State Trust		Local/Other		Total	
Cash	Recurr	Cash	Recurr	Cash	Recurr	Cash	Recurr
(108.6)	(108.6)	(*)	(*)	(21.4)	(21.4)	(130.0)	(130.0)

2023-24							
General Revenue		State Trust		Local/Other		Total	
Cash	Recurr	Cash	Recurr	Cash	Recurr	Cash	Recurr
(109.1)	(109.1)	(*)	(*)	(21.7)	(21.7)	(130.8)	(130.8)

Insignificant positive (less than \$50,000) \*

Insignificant negative (less than \$50,000) (\*)

**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 the following sections of the Florida Statutes: 202.12, 202.20, and 337.401.

**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 Innovation, Industry, and Technology on March 12, 2019:**

The committee substitute revises the bill’s provisions on to the election on permit fees and communications services taxes rates. Municipalities and counties that, as of January 1, 2019, were not imposing permit fees cannot reverse this election and cannot impose permit fees. In contrast, municipalities and counties that were imposing permit fees as of that date may

continue to do so or may elect to no longer impose permit fees. The bill retains existing provisions on fees and changes to elections applicable only to this latter group.

The committee substitute adds to the bill extensive provisions on use of rights-of-way, including provisions on small and micro wireless infrastructure, including:

- Creating a civil cause of action for any person aggrieved by a violation of the right-of-way statute in a U.S. District Court or any other court of competent jurisdiction for a temporary or permanent injunction and recovery of full costs and reasonable attorney fees to a prevailing aggrieved party;
- Prohibiting a local government permitting authority from instituting, either expressly or de facto, a moratorium or other mechanism that would prohibit or delay permits for collocation of small wireless facilities or related poles;
- Deleting authority for a local government to require performance bonds and security funds and allowing them to require a construction bond limited to no more than one year after the construction is completed;
- Requiring a local government to accept a letter of credit or similar instrument issued by any financial institution authorized to do business within the U.S.;
- Allowing a provider of communications services to add a permitting authority to any existing bond, insurance policy, or other financial instrument, and requiring the authority to accept such coverage.

Finally, under the committee substitute, a local government may not:

- Prohibit, regulate, or charge for the installation, maintenance, modification, operation or replacement of utility poles used for the collocation of small wireless facilities;
- Require a demonstration that collocation of a small wireless facility on an existing structure is not legally or technically possible as a condition for granting a permit for collocation on a new utility pole;
- Require compliance with an authority's law regarding placement of small wireless facilities or a new utility pole used to support a small wireless facility in rights-of-way not controlled by the authority;
- Require a meeting before filing an application;
- Require direct or indirect public notification or a public meeting for the placement of communication facilities in the right-of-way;
- Limit the size or configuration of a small wireless facility or any of its components, if the small wireless facility complies with existing size limits;
- Require that any component of a small wireless facility be placed underground; or
- Require that any existing communication facility be placed underground.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/13/2019	.	
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The Committee on Innovation, Industry, and Technology (Hutson) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 49 - 299

and insert:

Section 2. Paragraph (b) of subsection (2) of section 202.20, Florida Statutes, is amended to read:

202.20 Local communications services tax conversion rates.-

(2)

(b) Except as otherwise provided in this subsection, "replaced revenue sources," as used in this section, means the



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11 following taxes, charges, fees, or other impositions to the  
12 extent that the respective local taxing jurisdictions were  
13 authorized to impose them prior to July 1, 2000.

14 1. With respect to municipalities and charter counties and  
15 the taxes authorized by s. 202.19(1):

16 a. The public service tax on telecommunications authorized  
17 by former s. 166.231(9).

18 b. Franchise fees on cable service providers as authorized  
19 by 47 U.S.C. s. 542.

20 c. The public service tax on prepaid calling arrangements.

21 d. Franchise fees on dealers of communications services  
22 which use the public roads or rights-of-way, up to the limit set  
23 forth in s. 337.401. For purposes of calculating rates under  
24 this section, it is the legislative intent that charter counties  
25 be treated as having had the same authority as municipalities to  
26 impose franchise fees on recurring local telecommunication  
27 service revenues prior to July 1, 2000. However, the Legislature  
28 recognizes that the authority of charter counties to impose such  
29 fees is in dispute, and the treatment provided in this section  
30 is not an expression of legislative intent that charter counties  
31 actually do or do not possess such authority.

32 e. Actual permit fees relating to placing or maintaining  
33 facilities in or on public roads or rights-of-way, collected  
34 from providers of long-distance, cable, and mobile  
35 communications services for the fiscal year ending September 30,  
36 1999; however, if a municipality or charter county elects the  
37 option to charge permit fees pursuant to s. 337.401(3)(c)  
38 ~~337.401(3)(c)1.a.~~, such fees shall not be included as a replaced  
39 revenue source.



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40           2. With respect to all other counties and the taxes  
41 authorized in s. 202.19(1), franchise fees on cable service  
42 providers as authorized by 47 U.S.C. s. 542.

43           Section 3. Subsection (3), paragraphs (e) and (f) of  
44 subsection (6), and paragraphs (b), (c), (d), (e), (f), (g), and  
45 (i) of subsection (7) of section 337.401, Florida Statutes, are  
46 amended, and subsection (8) is added to that section, to read:

47           337.401 Use of right-of-way for utilities subject to  
48 regulation; permit; fees.—

49           (3) (a) Because of the unique circumstances applicable to  
50 providers of communications services, including, but not limited  
51 to, the circumstances described in paragraph (e) and the fact  
52 that federal and state law require the nondiscriminatory  
53 treatment of providers of telecommunications services, and  
54 because of the desire to promote competition among providers of  
55 communications services, it is the intent of the Legislature  
56 that municipalities and counties treat providers of  
57 communications services in a nondiscriminatory and competitively  
58 neutral manner, taking into account the distinct engineering,  
59 construction, operation, maintenance, public works, and safety  
60 requirements of the provider's facilities, when imposing rules  
61 or regulations governing the placement or maintenance of  
62 communications facilities in the public roads or rights-of-way.  
63 Rules or regulations imposed by a municipality or county  
64 relating to providers of communications services placing or  
65 maintaining communications facilities in its roads or rights-of-  
66 way must be generally applicable to all providers of  
67 communications services and, notwithstanding any other law, may  
68 not require a provider of communications services to apply for



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69 or enter into an individual license, franchise, or other  
70 agreement with the municipality or county as a condition of  
71 placing or maintaining communications facilities in its roads or  
72 rights-of-way. In addition to other reasonable rules or  
73 regulations that a municipality or county may adopt relating to  
74 the placement or maintenance of communications facilities in its  
75 roads or rights-of-way under this subsection or subsection (7),  
76 a municipality or county may require a provider of  
77 communications services that places or seeks to place facilities  
78 in its roads or rights-of-way to register with the municipality  
79 or county. To register, a provider of communications services  
80 only may be required to provide its name and to provide the name  
81 of the registrant; the name, address, and telephone number of a  
82 contact person for the registrant; the number of the  
83 registrant's current certificate of authorization issued by the  
84 Florida Public Service Commission, the Federal Communications  
85 Commission, or the Department of State; and any required proof  
86 of insurance or self-insuring status adequate to defend and  
87 cover claims. A municipality or county may not require the  
88 provision of an inventory of communications facilities, maps,  
89 locations of such facilities, or other information by a  
90 registrant as a condition of registration, renewal, or for any  
91 other purpose; provided, however, that a municipality or county  
92 may require as part of a permit application that the applicant  
93 identify at-grade communications facilities within 25 feet of  
94 the proposed installation location for the placement of at-grade  
95 communications facilities. A municipality or county may not  
96 require registration renewal more frequently than every 5 years.  
97 A municipality or county may not require a provider to pay any



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98 fee, cost, or other charge for registration or renewal thereof.  
99 It is the intent of the Legislature that the placement,  
100 operation, maintenance, upgrading, and extension of  
101 communications facilities not be unreasonably interrupted or  
102 delayed through the permitting or other local regulatory  
103 process. Except as provided in this chapter or otherwise  
104 expressly authorized by chapter 202, chapter 364, or chapter  
105 610, a municipality or county may not adopt or enforce any  
106 ordinance, regulation, or requirement as to the placement or  
107 operation of communications facilities in a right-of-way by a  
108 communications services provider authorized by state or local  
109 law to operate in a right-of-way; regulate any communications  
110 services; or impose or collect any tax, fee, cost, charge, or  
111 exaction for the provision of communications services over the  
112 communications services provider's communications facilities in  
113 a right-of-way.

114 (b) Registration described in paragraph (a) does not  
115 establish a right to place or maintain, or priority for the  
116 placement or maintenance of, a communications facility in roads  
117 or rights-of-way of a municipality or county. Each municipality  
118 and county retains the authority to regulate and manage  
119 municipal and county roads or rights-of-way in exercising its  
120 police power, subject to the limitations imposed in this section  
121 and chapters 202 and 610. Any rules or regulations adopted by a  
122 municipality or county which govern the occupation of its roads  
123 or rights-of-way by providers of communications services must be  
124 related to the placement or maintenance of facilities in such  
125 roads or rights-of-way, must be reasonable and  
126 nondiscriminatory, and may include only those matters necessary



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127 to manage the roads or rights-of-way of the municipality or  
128 county.

129 (c) Any municipality or county that, as of January 1, 2019,  
130 elected to require permit fees from any provider of  
131 communications services that uses or occupy municipal or county  
132 road or rights-of-way pursuant to former paragraph (c) or  
133 paragraph (j), Florida Statutes 2018, may continue to require  
134 and collect such fees. A municipality or county that elected as  
135 of such date to require permit fees may elect to forego such  
136 fees as provided herein. A municipality or county that elected  
137 as of such date not to require permit fees may not elect to  
138 impose permit fees.

139 ~~1. It is the intention of the state to treat all providers~~  
140 ~~of communications services that use or occupy municipal or~~  
141 ~~charter county roads or rights-of-way for the provision of~~  
142 ~~communications services in a nondiscriminatory and competitively~~  
143 ~~neutral manner with respect to the payment of permit fees.~~  
144 ~~Certain providers of communications services have been granted~~  
145 ~~by general law the authority to offset permit fees against~~  
146 ~~franchise or other fees while other providers of communications~~  
147 ~~services have not been granted this authority. In order to treat~~  
148 ~~all providers of communications services in a nondiscriminatory~~  
149 ~~and competitively neutral manner with respect to the payment of~~  
150 ~~permit fees, each municipality and charter county shall make an~~  
151 ~~election under either sub-subparagraph a. or sub-subparagraph b.~~  
152 ~~and must inform the Department of Revenue of the election by~~  
153 ~~certified mail by July 16, 2001. Such election shall take effect~~  
154 ~~October 1, 2001.~~

155 ~~a.(I) The municipality or charter county may require and~~





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156 ~~collect permit fees from any providers of communications~~  
157 ~~services that use or occupy municipal or county roads or rights-~~  
158 ~~of-way.~~ All fees authorized ~~permitted~~ under this paragraph ~~sub-~~  
159 ~~subparagraph~~ must be reasonable and commensurate with the direct  
160 and actual cost of the regulatory activity, including issuing  
161 and processing permits, plan reviews, physical inspection, and  
162 direct administrative costs; must be demonstrable; and must be  
163 equitable among users of the roads or rights-of-way. A fee  
164 authorized ~~permitted~~ under this paragraph ~~sub-subparagraph~~ may  
165 not~~+~~ be offset against the tax imposed under chapter 202;  
166 include the costs of roads or rights-of-way acquisition or roads  
167 or rights-of-way rental; include any general administrative,  
168 management, or maintenance costs of the roads or rights-of-way;  
169 or be based on a percentage of the value or costs associated  
170 with the work to be performed on the roads or rights-of-way. In  
171 an action to recover amounts due for a fee not authorized  
172 ~~permitted~~ under this paragraph ~~sub-subparagraph~~, the prevailing  
173 party may recover court costs and attorney ~~attorney's~~ fees at  
174 trial and on appeal. In addition to the limitations set forth in  
175 this section, a fee levied by a municipality or charter county  
176 under this paragraph ~~sub-subparagraph~~ may not exceed \$100.  
177 However, permit fees may not be imposed with respect to permits  
178 that may be required for service drop lines not required to be  
179 noticed under s. 556.108(5) ~~s. 556.108(5)(a)2.~~ or for any  
180 activity that does not require the physical disturbance of the  
181 roads or rights-of-way or does not impair access to or full use  
182 of the roads or rights-of-way, including, but not limited to,  
183 any emergency repairs of existing lawfully placed facilities,  
184 extensions of such facilities for providing communications



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185 services to customers, and the placement of micro wireless  
186 facilities in accordance with subparagraph (7)(e)3.

187 ~~(II) To ensure competitive neutrality among providers of~~  
188 ~~communications services, for any municipality or charter county~~  
189 ~~that elects to exercise its authority to require and collect~~  
190 ~~permit fees under this sub-subparagraph, the rate of the local~~  
191 ~~communications services tax imposed by such jurisdiction, as~~  
192 ~~computed under s. 202.20, shall automatically be reduced by a~~  
193 ~~rate of 0.12 percent.~~

194 ~~b. Alternatively, the municipality or charter county may~~  
195 ~~elect not to require and collect permit fees from any provider~~  
196 ~~of communications services that uses or occupies municipal or~~  
197 ~~charter county roads or rights-of-way for the provision of~~  
198 ~~communications services; however, each municipality or charter~~  
199 ~~county that elects to operate under this sub-subparagraph~~  
200 ~~retains all authority to establish rules and regulations for~~  
201 ~~providers of communications services to use or occupy roads or~~  
202 ~~rights-of-way as provided in this section.~~

203 1. If a municipality or charter county elects to not  
204 require permit fees ~~operate under this sub-subparagraph, the~~  
205 ~~total rate for the local communications services tax as computed~~  
206 ~~under s. 202.20 for that municipality or charter county may be~~  
207 ~~increased by ordinance or resolution by an amount not to exceed~~  
208 ~~a rate of 0.12 percent. If a municipality or charter county~~  
209 ~~elects to increase its rate effective October 1, 2001, the~~  
210 ~~municipality or charter county shall inform the department of~~  
211 ~~such increased rate by certified mail postmarked on or before~~  
212 ~~July 16, 2001.~~

213 ~~e. A municipality or charter county that does not make an~~



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214 ~~election as provided for in this subparagraph shall be presumed~~  
215 ~~to have elected to operate under the provisions of sub-~~  
216 ~~subparagraph b.~~

217 ~~2. Each noncharter county shall make an election under~~  
218 ~~either sub-subparagraph a. or sub-subparagraph b. and shall~~  
219 ~~inform the Department of Revenue of the election by certified~~  
220 ~~mail by July 16, 2001. Such election shall take effect October~~  
221 ~~1, 2001.~~

222 ~~a. The noncharter county may elect to require and collect~~  
223 ~~permit fees from any providers of communications services that~~  
224 ~~use or occupy noncharter county roads or rights-of-way. All fees~~  
225 ~~permitted under this sub-subparagraph must be reasonable and~~  
226 ~~commensurate with the direct and actual cost of the regulatory~~  
227 ~~activity, including issuing and processing permits, plan~~  
228 ~~reviews, physical inspection, and direct administrative costs;~~  
229 ~~must be demonstrable; and must be equitable among users of the~~  
230 ~~roads or rights-of-way. A fee permitted under this sub-~~  
231 ~~subparagraph may not: be offset against the tax imposed under~~  
232 ~~chapter 202; include the costs of roads or rights-of-way~~  
233 ~~acquisition or roads or rights-of-way rental; include any~~  
234 ~~general administrative, management, or maintenance costs of the~~  
235 ~~roads or rights-of-way; or be based on a percentage of the value~~  
236 ~~or costs associated with the work to be performed on the roads~~  
237 ~~or rights-of-way. In an action to recover amounts due for a fee~~  
238 ~~not permitted under this sub-subparagraph, the prevailing party~~  
239 ~~may recover court costs and attorney's fees at trial and on~~  
240 ~~appeal. In addition to the limitations set forth in this~~  
241 ~~section, a fee levied by a noncharter county under this sub-~~  
242 ~~subparagraph may not exceed \$100. However, permit fees may not~~



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243 ~~be imposed with respect to permits that may be required for~~  
244 ~~service drop lines not required to be noticed under s.~~  
245 ~~556.108(5)(a)2. or for any activity that does not require the~~  
246 ~~physical disturbance of the roads or rights-of-way or does not~~  
247 ~~impair access to or full use of the roads or rights-of-way.~~

248 ~~b. Alternatively, the noncharter county may elect not to~~  
249 ~~require and collect permit fees from any provider of~~  
250 ~~communications services that uses or occupies noncharter county~~  
251 ~~roads or rights-of-way for the provision of communications~~  
252 ~~services; however, each noncharter county that elects to operate~~  
253 ~~under this sub-subparagraph shall retain all authority to~~  
254 ~~establish rules and regulations for providers of communications~~  
255 ~~services to use or occupy roads or rights-of-way as provided in~~  
256 ~~this section.~~

257 2. If a noncharter county elects to not require permit fees  
258 ~~operate under this sub-subparagraph, the total rate for the~~  
259 ~~local communications services tax as computed under s. 202.20~~  
260 ~~for that noncharter county may be increased by ordinance or~~  
261 ~~resolution by an amount not to exceed a rate of 0.24 percent, to~~  
262 ~~replace the revenue the noncharter county would otherwise have~~  
263 ~~received from permit fees for providers of communications~~  
264 ~~services. If a noncharter county elects to increase its rate~~  
265 ~~effective October 1, 2001, the noncharter county shall inform~~  
266 ~~the department of such increased rate by certified mail~~  
267 ~~postmarked on or before July 16, 2001.~~

268 ~~e. A noncharter county that does not make an election as~~  
269 ~~provided for in this subparagraph shall be presumed to have~~  
270 ~~elected to operate under the provisions of sub-subparagraph b.~~

271 ~~3. Except as provided in this paragraph, municipalities and~~



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272 ~~counties retain all existing authority to require and collect~~  
273 ~~permit fees from users or occupants of municipal or county roads~~  
274 ~~or rights-of-way and to set appropriate permit fee amounts.~~

275 (d) ~~After January 1, 2001,~~ In addition to any other notice  
276 requirements, a municipality must provide to the Secretary of  
277 State, at least 10 days prior to consideration on first reading,  
278 notice of a proposed ordinance governing a telecommunications  
279 company placing or maintaining telecommunications facilities in  
280 its roads or rights-of-way. ~~After January 1, 2001,~~ In addition  
281 to any other notice requirements, a county must provide to the  
282 Secretary of State, at least 15 days prior to consideration at a  
283 public hearing, notice of a proposed ordinance governing a  
284 telecommunications company placing or maintaining  
285 telecommunications facilities in its roads or rights-of-way. The  
286 notice required by this paragraph must be published by the  
287 Secretary of State on a designated Internet website. The failure  
288 of a municipality or county to provide such notice does not  
289 render the ordinance invalid, provided that enforcement of such  
290 ordinance must be suspended until the municipality or county  
291 provides the required notice and duly considers amendments from  
292 affected persons.

293 (e) The authority of municipalities and counties to require  
294 franchise fees from providers of communications services, with  
295 respect to the provision of communications services, is  
296 specifically preempted by the state because of unique  
297 circumstances applicable to providers of communications services  
298 when compared to other utilities occupying municipal or county  
299 roads or rights-of-way. Providers of communications services may  
300 provide similar services in a manner that requires the placement



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301 of facilities in municipal or county roads or rights-of-way or  
302 in a manner that does not require the placement of facilities in  
303 such roads or rights-of-way. Although similar communications  
304 services may be provided by different means, the state desires  
305 to treat providers of communications services in a  
306 nondiscriminatory manner and to have the taxes, franchise fees,  
307 and other fees, costs, and financial or regulatory exactions  
308 paid by or imposed on providers of communications services be  
309 competitively neutral. Municipalities and counties retain all  
310 existing authority, if any, to collect franchise fees from users  
311 or occupants of municipal or county roads or rights-of-way other  
312 than providers of communications services, and the provisions of  
313 this subsection shall have no effect upon this authority. The  
314 provisions of this subsection do not restrict the authority, if  
315 any, of municipalities or counties or other governmental  
316 entities to receive reasonable rental fees based on fair market  
317 value for the use of public lands and buildings on property  
318 outside the public roads or rights-of-way for the placement of  
319 communications antennas and towers.

320 (f) Except as expressly allowed or authorized by general  
321 law and except for the rights-of-way permit fees subject to  
322 paragraph (c), a municipality or county may not levy on a  
323 provider of communications services a tax, fee, or other charge  
324 or imposition for operating as a provider of communications  
325 services within the jurisdiction of the municipality or county  
326 which is in any way related to using its roads or rights-of-way.  
327 A municipality or county may not require or solicit in-kind  
328 compensation, except as otherwise provided in s. 202.24(2)(c)8.  
329 or s. 610.109, provided that the in-kind compensation is not a



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330 franchise fee under federal law. Nothing in this paragraph shall  
331 impair any ordinance or agreement in effect on May 22, 1998, or  
332 any voluntary agreement entered into subsequent to that date,  
333 which provides for or allows in-kind compensation by a  
334 telecommunications company.

335 (g) A municipality or county may not use its authority over  
336 the placement of facilities in its roads and rights-of-way as a  
337 basis for asserting or exercising regulatory control over a  
338 provider of communications services regarding matters within the  
339 exclusive jurisdiction of the Florida Public Service Commission  
340 or the Federal Communications Commission, including, but not  
341 limited to, the operations, systems, equipment, technology,  
342 qualifications, services, service quality, service territory,  
343 and prices of a provider of communications services. A  
344 municipality or county may not require any permit for the  
345 installation, placement, maintenance, or replacement of aerial  
346 wireline communications facilities on or between existing  
347 utility poles by a communications services provider; provided,  
348 however, that a municipality or county may require a right-of-  
349 way permit for work that involves excavation, closure of a  
350 sidewalk, or closure of a vehicular lane, unless the provider is  
351 making emergency restoration or repair work to existing lawfully  
352 placed facilities. Any permit application required by an  
353 authority under this section for the placement of communications  
354 facilities must be processed and acted upon consistent with the  
355 timeframes provided in subparagraphs (7) (d) 7.-9. In addition, a  
356 municipality or county may not require any permit or other  
357 approval, fee, charge, or cost, or other exaction for the  
358 extension, routine maintenance and repair, or replacement and



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359 upgrade of existing aerial or underground communications  
360 facilities located on private property outside of the public  
361 rights-of-way.

362 (h) A provider of communications services that has obtained  
363 permission to occupy the roads or rights-of-way of an  
364 incorporated municipality pursuant to s. 362.01 or that is  
365 otherwise lawfully occupying the roads or rights-of-way of a  
366 municipality or county shall not be required to obtain consent  
367 to continue such lawful occupation of those roads or rights-of-  
368 way; however, nothing in this paragraph shall be interpreted to  
369 limit the power of a municipality or county to adopt or enforce  
370 reasonable rules or regulations as provided in this section and  
371 consistent with chapters 202, 364, and 610. Any such rules or  
372 regulations must be in writing, and providers of communications  
373 services in the municipality or county must be given at least 60  
374 days advance written notice of any changes to the rules and  
375 regulations.

376 (i) Except as expressly provided in this section, this  
377 section does not modify the authority of municipalities and  
378 counties to levy the tax authorized in chapter 202 or the duties  
379 of providers of communications services under ss. 337.402-  
380 337.404. This section does not apply to building permits, pole  
381 attachments, or private roads, private easements, and private  
382 rights-of-way.

383 ~~(j) Pursuant to this paragraph, any county or municipality~~  
384 ~~may by ordinance change either its election made on or before~~  
385 ~~July 16, 2001, under paragraph (c) or an election made under~~  
386 ~~this paragraph.~~

387 ~~1.a. If a municipality or charter county changes its~~





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388 ~~election under this paragraph in order to exercise its authority~~  
389 ~~to require and collect permit fees in accordance with this~~  
390 ~~subsection, the rate of the local communications services tax~~  
391 ~~imposed by such jurisdiction pursuant to ss. 202.19 and 202.20~~  
392 ~~shall automatically be reduced by the sum of 0.12 percent plus~~  
393 ~~the percentage, if any, by which such rate was increased~~  
394 ~~pursuant to sub-subparagraph (c)1.b.~~

395 ~~b. If a municipality or charter county changes its election~~  
396 ~~under this paragraph in order to discontinue requiring and~~  
397 ~~collecting permit fees, the rate of the local communications~~  
398 ~~services tax imposed by such jurisdiction pursuant to ss. 202.19~~  
399 ~~and 202.20 may be increased by ordinance or resolution by an~~  
400 ~~amount not to exceed 0.24 percent.~~

401 ~~2.a. If a noncharter county changes its election under this~~  
402 ~~paragraph in order to exercise its authority to require and~~  
403 ~~collect permit fees in accordance with this subsection, the rate~~  
404 ~~of the local communications services tax imposed by such~~  
405 ~~jurisdiction pursuant to ss. 202.19 and 202.20 shall~~  
406 ~~automatically be reduced by the percentage, if any, by which~~  
407 ~~such rate was increased pursuant to sub-subparagraph (c)2.b.~~

408 ~~b. If a noncharter county changes its election under this~~  
409 ~~paragraph in order to discontinue requiring and collecting~~  
410 ~~permit fees, the rate of the local communications services tax~~  
411 ~~imposed by such jurisdiction pursuant to ss. 202.19 and 202.20~~  
412 ~~may be increased by ordinance or resolution by an amount not to~~  
413 ~~exceed 0.24 percent.~~

414 ~~3.a. Any change of election pursuant to this paragraph and~~  
415 ~~any tax rate change resulting from such change of election shall~~  
416 ~~be subject to the notice requirements of s. 202.21; however, no~~



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417 ~~such change of election shall become effective prior to January~~  
418 ~~1, 2003.~~

419 ~~b. Any county or municipality changing its election under~~  
420 ~~this paragraph in order to exercise its authority to require and~~  
421 ~~collect permit fees shall, in addition to complying with the~~  
422 ~~notice requirements under s. 202.21, provide to all dealers~~  
423 ~~providing communications services in such jurisdiction written~~  
424 ~~notice of such change of election by September 1 immediately~~  
425 ~~preceding the January 1 on which such change of election becomes~~  
426 ~~effective. For purposes of this sub-subparagraph, dealers~~  
427 ~~providing communications services in such jurisdiction shall~~  
428 ~~include every dealer reporting tax to such jurisdiction pursuant~~  
429 ~~to s. 202.37 on the return required under s. 202.27 to be filed~~  
430 ~~on or before the 20th day of May immediately preceding the~~  
431 ~~January 1 on which such change of election becomes effective.~~

432 ~~(k)~~ Notwithstanding the provisions of s. 202.19, when a  
433 local communications services tax rate is changed as a result of  
434 an election made or changed under this subsection, such rate may  
435 ~~shall~~ not be rounded to tenths.

436 (6)

437 (e) This subsection does not alter any provision of this  
438 section or s. 202.24 relating to taxes, fees, or other charges  
439 or impositions by a municipality or county on a dealer of  
440 communications services or authorize that any charges be  
441 assessed on a dealer of communications services, except as  
442 specifically set forth herein. A municipality or county may not  
443 charge a pass-through provider any amounts other than the  
444 charges under this subsection as a condition to the placement or  
445 maintenance of a communications facility in the roads or rights-



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446 of-way of a municipality or county by a pass-through provider,  
447 except that a municipality or county may impose permit fees on a  
448 pass-through provider consistent with paragraph (3)(c) ~~if the~~  
449 ~~municipality or county elects to exercise its authority to~~  
450 ~~collect permit fees under paragraph (3)(e).~~

451 (f) The charges under this subsection do not apply to  
452 communications facilities placed in a municipality's or county's  
453 rights-of-way prior to the effective date of this subsection  
454 with permission from the municipality or county, if any was  
455 required, except to the extent the facilities of a pass-through  
456 provider were subject to per linear foot or mile charges in  
457 effect as of October 1, 2001, in which case the municipality or  
458 county may only impose on a pass-through provider charges  
459 consistent with paragraph (b) or paragraph (c) for such  
460 facilities. Notwithstanding the foregoing, this subsection does  
461 not impair any written agreement between a pass-through provider  
462 and a municipality or county imposing per linear foot or mile  
463 charges for communications facilities placed in municipal or  
464 county roads or rights-of-way that is in effect prior to the  
465 effective date of this subsection. Upon the termination or  
466 expiration of any such written agreement, any charges imposed  
467 must ~~shall~~ be consistent with this section ~~paragraph (b) or~~  
468 ~~paragraph (c). Notwithstanding the foregoing, until October 1,~~  
469 ~~2005, this subsection shall not affect a municipality or county~~  
470 ~~continuing to impose charges in excess of the charges authorized~~  
471 ~~in this subsection on facilities of a pass-through provider that~~  
472 ~~is not a dealer of communications services in the state under~~  
473 ~~chapter 202, but only to the extent such charges were imposed by~~  
474 ~~municipal or county ordinance or resolution adopted prior to~~



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475 ~~February 1, 2002. Effective October 1, 2005, any charges imposed~~  
476 ~~shall be consistent with paragraph (b) or paragraph (c).~~

477 (7)

478 (b) As used in this subsection, the term:

479 1. "Antenna" means communications equipment that transmits  
480 or receives electromagnetic radio frequency signals used in  
481 providing wireless services.

482 2. "Applicable codes" means uniform building, fire,  
483 electrical, plumbing, or mechanical codes adopted by a  
484 recognized national code organization or local amendments to  
485 those codes enacted solely to address threats of destruction of  
486 property or injury to persons, ~~or local codes or ordinances~~  
487 ~~adopted to implement this subsection. The term includes~~  
488 ~~objective design standards adopted by ordinance that may require~~  
489 ~~a new utility pole that replaces an existing utility pole to be~~  
490 ~~of substantially similar design, material, and color or that may~~  
491 ~~require reasonable spacing requirements concerning the location~~  
492 ~~of ground-mounted equipment. The term includes objective design~~  
493 ~~standards adopted by ordinance that may require a small wireless~~  
494 ~~facility to meet reasonable location context, color, stealth,~~  
495 ~~and concealment requirements; however, such design standards may~~  
496 ~~be waived by the authority upon a showing that the design~~  
497 ~~standards are not reasonably compatible for the particular~~  
498 ~~location of a small wireless facility or that the design~~  
499 ~~standards impose an excessive expense. The waiver shall be~~  
500 ~~granted or denied within 45 days after the date of the request.~~

501 3. "Applicant" means a person who submits an application  
502 and is a wireless provider.

503 4. "Application" means a request submitted by an applicant



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504 to an authority for a permit to collocate small wireless  
505 facilities or to place a new utility pole used to support a  
506 small wireless facility.

507 5. "Authority" means a county or municipality having  
508 jurisdiction and control of the rights-of-way of any public  
509 road. The term does not include the Department of  
510 Transportation. Rights-of-way under the jurisdiction and control  
511 of the department are excluded from this subsection.

512 6. "Authority utility pole" means a utility pole owned by  
513 an authority in the right-of-way. The term does not include a  
514 utility pole owned by a municipal electric utility, a utility  
515 pole used to support municipally owned or operated electric  
516 distribution facilities, or a utility pole located in the right-  
517 of-way within:

518 a. A retirement community that:

519 (I) Is deed restricted as housing for older persons as  
520 defined in s. 760.29(4) (b);

521 (II) Has more than 5,000 residents; and

522 (III) Has underground utilities for electric transmission  
523 or distribution.

524 b. A municipality that:

525 (I) Is located on a coastal barrier island as defined in s.  
526 161.053(1) (b)3.;

527 (II) Has a land area of less than 5 square miles;

528 (III) Has less than 10,000 residents; and

529 (IV) Has, before July 1, 2017, received referendum approval  
530 to issue debt to finance municipal-wide undergrounding of its  
531 utilities for electric transmission or distribution.

532 7. "Collocate" or "collocation" means to install, mount,



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533 maintain, modify, operate, or replace one or more wireless  
534 facilities on, under, within, or adjacent to a wireless support  
535 structure or utility pole. The term does not include the  
536 installation of a new utility pole or wireless support structure  
537 in the public rights-of-way.

538 8. "FCC" means the Federal Communications Commission.

539 9. "Micro wireless facility" means a small wireless  
540 facility having dimensions no larger than 24 inches in length,  
541 15 inches in width, and 12 inches in height and an exterior  
542 antenna, if any, no longer than 11 inches.

543 10. "Small wireless facility" means a wireless facility  
544 that meets the following qualifications:

545 a. Each antenna associated with the facility is located  
546 inside an enclosure of no more than 6 cubic feet in volume or,  
547 in the case of antennas that have exposed elements, each antenna  
548 and all of its exposed elements could fit within an enclosure of  
549 no more than 6 cubic feet in volume; and

550 b. All other wireless equipment associated with the  
551 facility is cumulatively no more than 28 cubic feet in volume.  
552 The following types of associated ancillary equipment are not  
553 included in the calculation of equipment volume: electric  
554 meters, concealment elements, telecommunications demarcation  
555 boxes, ground-based enclosures, grounding equipment, power  
556 transfer switches, cutoff switches, vertical cable runs for the  
557 connection of power and other services, and utility poles or  
558 other support structures.

559 11. "Utility pole" means a pole or similar structure that  
560 is used in whole or in part to provide communications services  
561 or for electric distribution, lighting, traffic control,



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562 signage, or a similar function. The term includes the vertical  
563 support structure for traffic lights but does not include a  
564 horizontal structure to which signal lights or other traffic  
565 control devices are attached and does not include a pole or  
566 similar structure 15 feet in height or less unless an authority  
567 grants a waiver for such pole.

568 12. "Wireless facility" means equipment at a fixed location  
569 which enables wireless communications between user equipment and  
570 a communications network, including radio transceivers,  
571 antennas, wires, coaxial or fiber-optic cable or other cables,  
572 regular and backup power supplies, and comparable equipment,  
573 regardless of technological configuration, and equipment  
574 associated with wireless communications. The term includes small  
575 wireless facilities. The term does not include:

576 a. The structure or improvements on, under, within, or  
577 adjacent to the structure on which the equipment is collocated;

578 b. Wireline backhaul facilities; or

579 c. Coaxial or fiber-optic cable that is between wireless  
580 structures or utility poles or that is otherwise not immediately  
581 adjacent to or directly associated with a particular antenna.

582 13. "Wireless infrastructure provider" means a person who  
583 has been certificated under chapter 364 to provide  
584 telecommunications service ~~in the state~~ or under chapter 610 to  
585 provide cable or video services in this state, or that person's  
586 affiliate, and who builds or installs wireless communication  
587 transmission equipment, wireless facilities, or wireless support  
588 structures but is not a wireless services provider.

589 14. "Wireless provider" means a wireless infrastructure  
590 provider or a wireless services provider.



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591 15. "Wireless services" means any services provided using  
592 licensed or unlicensed spectrum, whether at a fixed location or  
593 mobile, using wireless facilities.

594 16. "Wireless services provider" means a person who  
595 provides wireless services.

596 17. "Wireless support structure" means a freestanding  
597 structure, such as a monopole, a guyed or self-supporting tower,  
598 or another existing or proposed structure designed to support or  
599 capable of supporting wireless facilities. The term does not  
600 include a utility pole, pedestal, or other support structure for  
601 ground-based equipment not mounted on a utility pole and less  
602 than 10 feet in height.

603 (c) Except as provided in this subsection, an authority may  
604 not prohibit, regulate, or charge for the collocation of small  
605 wireless facilities in the public rights-of-way or for the  
606 installation, maintenance, modification, operation, or  
607 replacement of utility poles used for the collocation of small  
608 wireless facilities in the public rights-of-way.

609 (d) An authority may require a registration process and  
610 permit fees in accordance with subsection (3). An authority  
611 shall accept applications for permits and shall process and  
612 issue permits subject to the following requirements:

613 1. An authority may not directly or indirectly require an  
614 applicant to perform services unrelated to the collocation for  
615 which approval is sought, such as in-kind contributions to the  
616 authority, including reserving fiber, conduit, or pole space for  
617 the authority.

618 2. An applicant may not be required to provide more  
619 information to obtain a permit than is necessary to demonstrate





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620 the applicant's compliance with applicable codes for the  
621 placement of small wireless facilities in the locations  
622 identified in the application. An applicant may not be required  
623 to provide inventories, maps, or locations of communications  
624 facilities in the right-of-way other than as necessary to avoid  
625 interference with other at-grade facilities located at the  
626 specific location proposed for a small wireless facility or  
627 within 25 feet of such location.

628 3. An authority may not:

629 a. Require the placement of small wireless facilities on  
630 any specific utility pole or category of poles; ~~or~~

631 b. Require the placement of multiple antenna systems on a  
632 single utility pole;

633 c. Require a demonstration that collocation of a small  
634 wireless facility on an existing structure is not legally or  
635 technically possible as a condition for granting a permit for  
636 the collocation of a small wireless facility on a new utility  
637 pole;

638 d. Require compliance with an authority's provisions  
639 regarding placement of small wireless facilities or a new  
640 utility pole used to support a small wireless facility in  
641 rights-of-way not under the control of the authority pursuant to  
642 a delegation from the department, or require such compliance as  
643 a condition to receive a permit that is ancillary to the permit  
644 for collocation of a small wireless facility, including an  
645 electrical permit;

646 e. Require a meeting before filing an application;

647 f. Require direct or indirect public notification or a  
648 public meeting for the placement of communication facilities in



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649 the right-of-way;

650 g. Limit the size or configuration of a small wireless  
651 facility or any of its components, if the small wireless  
652 facility complies with the size limits in this subsection;

653 h. Prohibit the installation of a new utility pole used to  
654 support the collocation of a small wireless facility if the  
655 installation otherwise meets the requirements of this  
656 subsection;

657 i. Require that any component of a small wireless facility  
658 be placed underground; or

659 j. Require that any existing communication facility be  
660 placed underground, except as provided in ss. 337.403 and  
661 337.404.

662 4. Subject to sub-subparagraph (f)6.b., an authority may  
663 not limit the placement, by minimum separation distances, of  
664 small wireless facilities, utility poles on which small wireless  
665 facilities are or will be collocated, or other at-grade  
666 communications facilities by minimum separation distances.

667 However, within 14 days after the date of filing the  
668 application, an authority may request that the proposed location  
669 of a small wireless facility be moved to another location in the  
670 right-of-way and placed on an alternative authority utility pole  
671 or support structure or placed on ~~may place~~ a new utility pole.

672 The authority and the applicant may negotiate the alternative  
673 location, including any objective design standards and  
674 reasonable spacing requirements for ground-based equipment, for  
675 30 days after the date of the request. At the conclusion of the  
676 negotiation period, if the alternative location is accepted by  
677 the applicant, the applicant must notify the authority of such



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678 acceptance and the application shall be deemed granted for any  
679 new location for which there is agreement and all other  
680 locations in the application. If an agreement is not reached,  
681 the applicant must notify the authority of such nonagreement and  
682 the authority must grant or deny the original application within  
683 90 days after the date the application was filed. A request for  
684 an alternative location, an acceptance of an alternative  
685 location, or a rejection of an alternative location must be in  
686 writing and provided by electronic mail.

687         5. An authority shall limit the height of a small wireless  
688 facility to 10 feet above the utility pole or structure upon  
689 which the small wireless facility is to be collocated. Unless  
690 waived by an authority, the height for a new utility pole is  
691 limited to the tallest existing utility pole as of July 1, 2017,  
692 located in the same right-of-way, other than a utility pole for  
693 which a waiver has previously been granted, measured from grade  
694 in place within 500 feet of the proposed location of the small  
695 wireless facility. If there is no utility pole within 500 feet,  
696 the authority shall limit the height of the utility pole to 50  
697 feet.

698         6. ~~Except as provided in subparagraphs 4. and 5.,~~ The  
699 installation by a communications services provider of a utility  
700 pole in the public rights-of-way, other than a utility pole used  
701 ~~designed~~ to support a small wireless facility, is shall be  
702 subject to authority rules or regulations governing the  
703 placement of utility poles in the public rights-of-way and is  
704 ~~shall be~~ subject to the application review timeframes in this  
705 subsection.

706         7. Within 14 days after receiving an application, an



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707 authority must determine and notify the applicant by electronic  
708 mail as to whether the application is complete. If an  
709 application is deemed incomplete, the authority must  
710 specifically identify the missing information. An application is  
711 deemed complete if the authority fails to provide notification  
712 to the applicant within 14 days.

713 8. An application must be processed on a nondiscriminatory  
714 basis. A complete application is deemed approved if an authority  
715 fails to approve or deny the application within 60 days after  
716 receipt of the application. If an authority does not use the 30-  
717 day negotiation period provided in subparagraph 4., the parties  
718 may mutually agree to extend the 60-day application review  
719 period. The authority shall grant or deny the application at the  
720 end of the extended period. A permit issued pursuant to an  
721 approved application shall remain effective for 1 year unless  
722 extended by the authority.

723 9. An authority must notify the applicant of approval or  
724 denial by electronic mail. An authority shall approve a complete  
725 application unless it does not meet the authority's applicable  
726 codes. If the application is denied, the authority must specify  
727 in writing the basis for denial, including the specific code  
728 provisions on which the denial was based, and send the  
729 documentation to the applicant by electronic mail on the day the  
730 authority denies the application. The applicant may cure the  
731 deficiencies identified by the authority and resubmit the  
732 application within 30 days after notice of the denial is sent to  
733 the applicant. The authority shall approve or deny the revised  
734 application within 30 days after receipt or the application is  
735 deemed approved. The review of a revised application is Any



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736 ~~subsequent review shall be~~ limited to the deficiencies cited in  
737 the denial. The availability of any subsequent review by the  
738 authority does not bar review of a denial in a court of  
739 competent jurisdiction.

740 10. An applicant seeking to collocate small wireless  
741 facilities within the jurisdiction of a single authority may, at  
742 the applicant's discretion, file a consolidated application and  
743 receive a single permit for the collocation of up to 30 small  
744 wireless facilities. If the application includes multiple small  
745 wireless facilities, an authority may separately address small  
746 wireless facility collocations for which incomplete information  
747 has been received or which are denied.

748 11. An authority may deny a proposed collocation of a small  
749 wireless facility in the public rights-of-way if the proposed  
750 collocation:

751 a. Materially interferes with the safe operation of traffic  
752 control equipment.

753 b. Materially interferes with sight lines or clear zones  
754 for transportation, pedestrians, or public safety purposes.

755 c. Materially interferes with compliance with the Americans  
756 with Disabilities Act or similar federal or state standards  
757 regarding pedestrian access or movement.

758 d. Materially fails to comply with the 2010 edition of the  
759 Florida Department of Transportation Utility Accommodation  
760 Manual.

761 e. Fails to comply with applicable codes.

762 f. Fails to comply with objective design standards  
763 authorized under subparagraph (f) 6.

764 12. An authority may adopt by ordinance provisions for



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765 insurance coverage, indemnification, ~~performance bonds, security~~  
766 ~~funds~~, force majeure, abandonment, authority liability, or  
767 authority warranties. Such provisions must be reasonable and  
768 nondiscriminatory. An authority may require a construction bond  
769 to secure restoration of the postconstruction rights-of-way to  
770 its preconstruction condition. However, such bond must be time-  
771 limited to no more than 1 year after the construction to which  
772 the bond applies is completed. For any financial obligation  
773 required by an authority allowed under this section, the  
774 authority shall accept a letter of credit or similar financial  
775 instrument issued by any financial institution that is  
776 authorized to do business within the United States, provided  
777 that a claim against the financial instrument may be made by  
778 electronic means, including by facsimile. A provider of  
779 communications services may add an authority to any existing  
780 bond, insurance policy, or other relevant financial instrument,  
781 and the authority must accept such proof of coverage without any  
782 conditions. An authority may not require a communications  
783 services provider to indemnify it for liabilities not caused by  
784 the provider, including liabilities arising from the authority's  
785 negligence, gross negligence, or willful conduct.

786 13. Collocation of a small wireless facility on an  
787 authority utility pole does not provide the basis for the  
788 imposition of an ad valorem tax on the authority utility pole.

789 14. An authority may reserve space on authority utility  
790 poles for future public safety uses. However, a reservation of  
791 space may not preclude collocation of a small wireless facility.  
792 If replacement of the authority utility pole is necessary to  
793 accommodate the collocation of the small wireless facility and



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794 the future public safety use, the pole replacement is subject to  
795 make-ready provisions and the replaced pole shall accommodate  
796 the future public safety use.

797 15. A structure granted a permit and installed pursuant to  
798 this subsection shall comply with chapter 333 and federal  
799 regulations pertaining to airport airspace protections.

800 (e) An authority may not require any permit or other  
801 approval or require fees, ~~or other~~ charges, costs, or other  
802 exactions for:

803 1. Routine maintenance or repair work, including, but not  
804 limited to, emergency repairs of existing lawfully placed  
805 facilities, or extensions of such facilities, for providing  
806 communications services to customers;

807 2. Replacement of existing wireless facilities with  
808 wireless facilities that are substantially similar or of the  
809 same or smaller size; or

810 3. Installation, placement, maintenance, or replacement of  
811 micro wireless facilities that are suspended on cables strung  
812 between existing utility poles in compliance with applicable  
813 codes by or for a communications services provider authorized to  
814 occupy the rights-of-way and who is remitting taxes under  
815 chapter 202. An authority may require an initial letter from or  
816 on behalf of such provider, which is effective upon filing,  
817 attesting that the micro wireless facility dimensions comply  
818 with the limits of this subsection. The authority may not  
819 require any additional filing or other information as long as  
820 the provider is deploying the same, a substantially similar, or  
821 a smaller size micro wireless facility equipment.

822



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823 Notwithstanding this paragraph, an authority may require a  
824 right-of-way permit for work that involves excavation, closure  
825 of a sidewalk, or closure of a vehicular lane unless the  
826 provider is making emergency restoration or repair work to  
827 existing lawfully placed facilities.

828 (f) Collocation of small wireless facilities on authority  
829 utility poles is subject to the following requirements:

830 1. An authority may not enter into an exclusive arrangement  
831 with any person for the right to attach equipment to authority  
832 utility poles.

833 2. The rates and fees for collocations on authority utility  
834 poles must be nondiscriminatory, regardless of the services  
835 provided by the collocating person.

836 3. The rate to collocate small wireless facilities on an  
837 authority utility pole may not exceed \$150 per pole annually.

838 4. Agreements between authorities and wireless providers  
839 that are in effect on July 1, 2017, and that relate to the  
840 collocation of small wireless facilities in the right-of-way,  
841 including the collocation of small wireless facilities on  
842 authority utility poles, remain in effect, subject to applicable  
843 termination provisions. The wireless provider may accept the  
844 rates, fees, and terms established under this subsection for  
845 small wireless facilities and utility poles that are the subject  
846 of an application submitted after the rates, fees, and terms  
847 become effective.

848 5. A person owning or controlling an authority utility pole  
849 shall offer rates, fees, and other terms that comply with this  
850 subsection. By the later of January 1, 2018, or 3 months after  
851 receiving a request to collocate its first small wireless





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852 facility on a utility pole owned or controlled by an authority,  
853 the person owning or controlling the authority utility pole  
854 shall make available, through ordinance or otherwise, rates,  
855 fees, and terms for the collocation of small wireless facilities  
856 on the authority utility pole which comply with this subsection.

857 a. The rates, fees, and terms must be nondiscriminatory and  
858 competitively neutral and must comply with this subsection.

859 b. For an authority utility pole that supports an aerial  
860 facility used to provide communications services or electric  
861 service, the parties shall comply with the process for make-  
862 ready work under 47 U.S.C. s. 224 and implementing regulations.  
863 The good faith estimate of the person owning or controlling the  
864 pole for any make-ready work necessary to enable the pole to  
865 support the requested collocation must include pole replacement  
866 if necessary.

867 c. For an authority utility pole that does not support an  
868 aerial facility used to provide communications services or  
869 electric service, the authority shall provide a good faith  
870 estimate for any make-ready work necessary to enable the pole to  
871 support the requested collocation, including necessary pole  
872 replacement, within 60 days after receipt of a complete  
873 application. Make-ready work, including any pole replacement,  
874 must be completed within 60 days after written acceptance of the  
875 good faith estimate by the applicant. Alternatively, an  
876 authority may require the applicant seeking to collocate a small  
877 wireless facility to provide a make-ready estimate at the  
878 applicant's expense for the work necessary to support the small  
879 wireless facility, including pole replacement, and perform the  
880 make-ready work. If pole replacement is required, the scope of



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881 the make-ready estimate is limited to the design, fabrication,  
882 and installation of a utility pole that is substantially similar  
883 in color and composition. The authority may not condition or  
884 restrict the manner in which the applicant obtains, develops, or  
885 provides the estimate or conducts the make-ready work subject to  
886 usual construction restoration standards for work in the right-  
887 of-way. The replaced or altered utility pole shall remain the  
888 property of the authority.

889 d. An authority may not require more make-ready work than  
890 is required to meet applicable codes or industry standards. Fees  
891 for make-ready work may not include costs related to preexisting  
892 damage or prior noncompliance. Fees for make-ready work,  
893 including any pole replacement, may not exceed actual costs or  
894 the amount charged to communications services providers other  
895 than wireless services providers for similar work and may not  
896 include any consultant fee or expense.

897 6. An authority may require wireless providers to comply  
898 with objective design standards adopted by ordinance. The  
899 ordinance may require:

900 a. A new utility pole that replaces an existing utility  
901 pole to be of substantially similar design, material, and color;

902 b. Reasonable spacing requirements concerning the location  
903 of a ground-mounted component of a small wireless facility which  
904 does not exceed 15 feet from the associated support structure;

905 or

906 c. A small wireless facility to meet reasonable location  
907 context, color, camouflage, and concealment requirements,  
908 subject to the limitations in this subsection.

909



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910 Such design standards under this subparagraph may be waived by  
911 the authority upon a showing that the design standards are not  
912 reasonably compatible for the particular location of a small  
913 wireless facility or are technically infeasible or that the  
914 design standards impose an excessive expense. The waiver must be  
915 granted or denied within 45 days after the date of the request.

916 (g) For any applications filed before the effective date of  
917 ordinances implementing this subsection, an authority may apply  
918 current ordinances relating to placement of communications  
919 facilities in the right-of-way related to registration,  
920 permitting, insurance coverage, indemnification, ~~performance~~  
921 ~~bonds, security funds,~~ force majeure, abandonment, authority  
922 liability, or authority warranties. Permit application  
923 requirements and small wireless facility placement requirements,  
924 including utility pole height limits, that conflict with this  
925 subsection must shall be waived by the authority. An authority  
926 may not institute, either expressly or de facto, a moratorium,  
927 zoning-in-progress, or other mechanism that would prohibit or  
928 delay the filing, receiving, or processing of registrations,  
929 applications, or issuing of permits or other approvals for the  
930 collocation of small wireless facilities or the installation,  
931 modification, or replacement of utility poles used to support  
932 the collocation of small wireless facilities.

933 ~~(i) A wireless provider shall, in relation to a small~~  
934 ~~wireless facility, utility pole, or wireless support structure~~  
935 ~~in the public rights-of-way, comply with nondiscriminatory~~  
936 ~~undergrounding requirements of an authority that prohibit above-~~  
937 ~~ground structures in public rights-of-way. Any such requirements~~  
938 ~~may be waived by the authority.~~



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939           (8) (a) Any person aggrieved by a violation of this section  
940 may bring a civil action in a United States District Court or in  
941 any other court of competent jurisdiction.

942           (b) The court may:

943           1. Grant temporary or permanent injunctions on terms as it  
944 may deem reasonable to prevent or restrain violations of this  
945 section; and

946           2. Direct the recovery of full costs, including awarding  
947 reasonable attorney fees, to an aggrieved party who prevails.

948  
949 ===== T I T L E   A M E N D M E N T =====

950 And the title is amended as follows:

951           Delete lines 2 - 11

952 and insert:

953           An act relating to communications services; amending  
954           s. 202.12, F.S.; reducing the rates of certain  
955           communications services taxes; amending s. 202.20,  
956           F.S.; conforming a cross-reference; amending s.  
957           337.401, F.S.; revising legislative intent; specifying  
958           limitations and prohibitions on municipalities and  
959           counties relating to registrations and renewals of  
960           communications services providers; authorizing  
961           municipalities and counties to require certain  
962           information as part of a permit application;  
963           prohibiting municipalities and counties from requiring  
964           a payment of fees, costs, or charges for provider  
965           registration or renewal; prohibiting municipalities  
966           and counties from adopting or enforcing certain  
967           ordinances, regulations, or requirements; specifying



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968 limitations on municipal and county authority to  
969 regulate and manage municipal and county roads or  
970 rights-of-way; prohibiting certain municipalities and  
971 counties from electing to impose permit fees;  
972 providing retroactive applicability; authorizing  
973 certain municipalities and counties to continue to  
974 require and collect such fees; deleting obsolete  
975 provisions; specifying activities for which permit  
976 fees may not be imposed; deleting certain provisions  
977 relating to municipality, charter county, and  
978 noncharter county elections to impose, or not to  
979 impose, permit fees; requiring that enforcement of  
980 certain ordinances must be suspended until certain  
981 conditions are met; revising legislative intent  
982 relating to the imposition of certain fees, costs, and  
983 exactions on providers; specifying a condition for  
984 certain in-kind compensation; specifying prohibited  
985 acts by municipalities and counties in the use of  
986 their authority over the placement of facilities for  
987 certain purposes; authorizing municipalities and  
988 counties to require a right-of-way permit for certain  
989 purposes; providing requirements for processing  
990 certain permit applications; prohibiting  
991 municipalities and counties from certain actions  
992 relating to certain aerial or underground  
993 communications facilities; specifying limitations and  
994 requirements for certain municipal and county rules  
995 and regulations; revising definitions under the  
996 Advanced Wireless Infrastructure Deployment Act;



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997 prohibiting certain actions by an authority relating  
998 to certain utility poles; prohibiting authorities from  
999 requiring permit applicants to provide certain  
1000 information, except under certain circumstances;  
1001 adding prohibited acts by authorities relating to  
1002 small wireless facilities, application requirements,  
1003 public notification and public meetings, and the  
1004 placement of certain facilities; revising  
1005 applicability of authority rules and regulations  
1006 governing the placement of utility poles in the public  
1007 rights-of-way; providing construction relating to  
1008 judicial review of certain application denials; adding  
1009 grounds for an authority's denial of a proposed  
1010 collocation of a small wireless facility in the public  
1011 rights-of-way; deleting an authority's authorization  
1012 to adopt ordinances for performance bonds and security  
1013 funds; authorizing an authority to require a  
1014 construction bond, subject to certain conditions;  
1015 requiring authorities to accept certain financial  
1016 instruments for certain financial obligations;  
1017 authorizing providers to add authorities to certain  
1018 financial instruments; prohibiting an authority from  
1019 requiring a provider to indemnify the authority for  
1020 certain liabilities; prohibiting an authority from  
1021 requiring a permit, approval, fees, charges, costs, or  
1022 exactions for certain activities; authorizing and  
1023 limiting filings the authority may require relating to  
1024 micro wireless facility equipment; providing an  
1025 exception to a provision authorizing an authority to



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1026       require a certain right-of-way permit; authorizing  
1027       authorities to require wireless providers to comply  
1028       with certain objective design standards adopted by  
1029       ordinance; authorizing the authority to waive such  
1030       design standards under certain circumstances;  
1031       providing a requirement for the waiver; revising an  
1032       authority's authorization to apply certain ordinances  
1033       to applications filed before a certain timeframe;  
1034       prohibiting authorities from certain actions relating  
1035       to registrations, applications, permits, and approvals  
1036       in relation to small wireless facilities; deleting a  
1037       requirement for wireless providers to comply with  
1038       certain undergrounding requirements; authorizing a  
1039       civil action for violations; authorizing actions a  
1040       court may take; providing



The Florida Senate

## Committee Agenda Request

**To:** Senator Wilton Simpson, Chair  
Committee on Innovation, Industry, and Technology

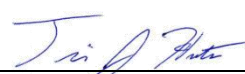
**Subject:** Committee Agenda Request

**Date:** March 11, 2019

---

I respectfully request that **Senate Bill #1000**, relating to Communication Services Taxes, be placed on the:

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

  
\_\_\_\_\_  
Senator Travis Hutson  
Florida Senate, District 7



THE FLORIDA SENATE

APPEARANCE RECORD

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

2/12/19  
Meeting Date

1000  
Bill Number (if applicable)

591504  
Amendment Barcode (if applicable)

Topic Communication Services

Name Amber Hughes

Job Title Sr. Legislative Advocate

Address PO Box 1757  
Street

Phone 850-701-3621

Tallahassee FL 32308  
City State Zip

Email ahughes@flcities.com

Speaking:  For  Against  Information

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

Representing Florida League of Cities

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

3/12/2019

*Meeting Date*

1000

*Bill Number (if applicable)*

591504

*Amendment Barcode (if applicable)*

Topic Communications Services Taxes

Name Christie Pontis

Job Title Director of Government Affairs

Address 315 S. Calhoun Street, Suite 500

*Street*

Tallahassee

*City*

FL

*State*

32301

*Zip*

Phone 850-599-1073

Email Christie.A.Pontis@CenturyLink.com

Speaking:  For  Against  Information

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

Representing CenturyLink

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)

3/12

Meeting Date

1000

Bill Number (if applicable)

591504

Amendment Barcode (if applicable)

Topic CST

Name Brewster Bevis

Job Title Senior Vice President

Address 516 W Adams

Street

Phone 224-7173

TLH

City

FL

State

32311

Zip

Email bbevis

Speaking:  For  Against  Information

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

Representing Associated Industries of 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.

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

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

3/12/19

*Meeting Date*

SB 1000

*Bill Number (if applicable)*

591504

*Amendment Barcode (if applicable)*

Topic Communications Services Tax

Name Laura Lenhart

Job Title Manager, Government & Regulatory Affairs - Frontier Communications

Address 610 E. Zack St., 4th Floor

Phone 9042078352

*Street*

Tampa

*City*

FL

*State*

33602

*Zip*

Email laura.lenhart@gmail.com

Speaking:  For  Against  Information

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

Representing Frontier Communications

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)

Meeting Date \_\_\_\_\_

Topic COMMUNICATIONS

Bill Number SB 1000  
*(if applicable)*

Name TRACY HATCH

Amendment Barcode 591504  
*(if applicable)*

Job Title SENIOR LEGAL COUNSEL

Address 150 S. MONROE ST SUITE 400  
*Street*

Phone 850-577-5505

TALLAHASSEE FL 32301  
*City State Zip*

E-mail tl9467@att.com

Speaking:  For  Against  Information

Representing ATT

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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/12/19

Meeting Date

1000

Bill Number (if applicable)

591504

Amendment Barcode (if applicable)

Topic Communications regulation/CST

Name Charles Dudley

Job Title General Counsel

Address 108 S. Monrovia St.

Street

Phone 681 0024

City

Callahan FL 32301

State

Zip

Email cdudley@flaposters.com

Speaking:  For  Against  Information

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

Representing FL Internet & Television Assoc.

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)

3/12/19  
Meeting Date

1000

Bill Number (if applicable)

Bill and Amendment

Amendment Barcode (if applicable)

Topic \_\_\_\_\_

Name Doug Mannheimer

Job Title Attmy + Lobbyist

Address 215 S. Monroe Suite 400

Phone 850 681 6810

100 Lafayette St 32301  
City State Zip

Email Dougmannheimer@nelsonmullins.com

Speaking:  For  Against  Information

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

Representing Sprint

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.

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

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

3-12-19  
Meeting Date

SB-1000  
Bill Number (if applicable)

Topic Communications Services Tax

Amendment Barcode (if applicable)

Name Kyle Baltich (Baltie)

Job Title Economist

Address 106 N Borough Sr  
Street

Phone 850-222-5052

Tallahassee FL 32301  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Florida TaxWatch

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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**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)

3/12/19

*Meeting Date*

1000

*Bill Number (if applicable)*

Topic ~~Professional Regulation~~ Communication Services Taxes

*Amendment Barcode (if applicable)*

Name Logan Padgett

Job Title Director of Communications

Address 100 N Duval Street

*Street*

Phone 850-386-3131

Tallahassee

FL

32301

Email lpadgett@jamesmadison.org

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing The James Madison Institute

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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***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)

3/12/14  
Meeting Date

1000  
Bill Number (if applicable)

Topic 56 (CST)

Amendment Barcode (if applicable)

Name Eric Poole

Job Title Legis. Rep.

Address 100 S. Monroe  
Street

Phone 922 4300

Tallah. FL 32314  
City State Zip

Email epoole@flcourts.org

Speaking:  For  Against  Information

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

Representing Florida Assoc. of Counties

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

3/12/19  
Meeting Date

1000  
Bill Number (if applicable)

Topic Communications Service

Amendment Barcode (if applicable)

Name Christopher Emmanuel

Job Title Policy Director

Address 136 OS Bronough  
Street

Phone \_\_\_\_\_

T2H FL 32301  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Florida Chamber of Commerce

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.

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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)

3/12/19

*Meeting Date*

1000

*Bill Number (if applicable)*

Topic Communications Services Taxes

*Amendment Barcode (if applicable)*

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St

Phone 224-7173

*Street*

Tallahassee

FL

32301

Email bbevis@aif.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Associated Industries of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/12/19

Meeting Date

1000/Hutson

Bill Number (if applicable)

Topic 9B1000/Hutson/CST

Amendment Barcode (if applicable)

Name Marva Johnson

Job Title VP-State Government Affairs - Charter Communications

Address 2251 Lucien Way

Phone 407-210-3175

Maitland, FL 32751

City State Zip

Email marva.johnson@charter.com

Speaking:  For  Against  Information

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

Representing Charter Communications / Spectrum

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)

3/12/19

Meeting Date

1000

Bill Number (if applicable)

Topic Communications Services Taxes

Amendment Barcode (if applicable)

Name Phillip Suderman

Job Title Policy Director

Address 200 W. College Ave

Phone \_\_\_\_\_

Street

Tallahassee

City

FL

State

32301

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Americans for Prosperity

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

The Florida Senate  
**COMMITTEE VOTE RECORD**

**COMMITTEE:** Innovation, Industry, and Technology  
**ITEM:** SB 1000  
**FINAL ACTION:** Favorable with Committee Substitute  
**MEETING DATE:** Tuesday, March 12, 2019  
**TIME:** 1:30—3:30 p.m.  
**PLACE:** 110 Senate Building

FINAL VOTE		SENATORS	3/12/2019 Amendment 591504 <sup>1</sup>					
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
		Bracy						
X		Bradley						
X		Brandes						
X		Braynon						
X		Farmer						
X		Gibson						
X		Hutson						
X		Passidomo						
X		Benacquisto, VICE CHAIR						
X		Simpson, CHAIR						
9	0	<b>TOTALS</b>	RCS	-				
<b>Yea</b>	<b>Nay</b>		<b>Yea</b>	<b>Nay</b>	<b>Yea</b>	<b>Nay</b>	<b>Yea</b>	<b>Nay</b>

CODES: FAV=Favorable      RCS=Replaced by Committee Substitute      TP=Temporarily Postponed      WD=Withdrawn  
 UNF=Unfavorable      RE=Replaced by Engrossed Amendment      VA=Vote After Roll Call      OO=Out of Order  
 -R=Reconsidered      RS=Replaced by Substitute Amendment      VC=Vote Change After Roll Call      AV=Abstain from Voting

By the Committee on Innovation, Industry, and Technology; and  
Senator Hutson

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1                                   A bill to be entitled  
2       An act relating to communications services; amending  
3       s. 202.12, F.S.; reducing the rates of certain  
4       communications services taxes; amending s. 202.20,  
5       F.S.; conforming a cross-reference; amending s.  
6       337.401, F.S.; revising legislative intent; specifying  
7       limitations and prohibitions on municipalities and  
8       counties relating to registrations and renewals of  
9       communications services providers; authorizing  
10      municipalities and counties to require certain  
11      information as part of a permit application;  
12      prohibiting municipalities and counties from requiring  
13      a payment of fees, costs, or charges for provider  
14      registration or renewal; prohibiting municipalities  
15      and counties from adopting or enforcing certain  
16      ordinances, regulations, or requirements; specifying  
17      limitations on municipal and county authority to  
18      regulate and manage municipal and county roads or  
19      rights-of-way; prohibiting certain municipalities and  
20      counties from electing to impose permit fees;  
21      providing retroactive applicability; authorizing  
22      certain municipalities and counties to continue to  
23      require and collect such fees; deleting obsolete  
24      provisions; specifying activities for which permit  
25      fees may not be imposed; deleting certain provisions  
26      relating to municipality, charter county, and  
27      noncharter county elections to impose, or not to  
28      impose, permit fees; requiring that enforcement of  
29      certain ordinances must be suspended until certain



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30 conditions are met; revising legislative intent  
31 relating to the imposition of certain fees, costs, and  
32 exactions on providers; specifying a condition for  
33 certain in-kind compensation; specifying prohibited  
34 acts by municipalities and counties in the use of  
35 their authority over the placement of facilities for  
36 certain purposes; authorizing municipalities and  
37 counties to require a right-of-way permit for certain  
38 purposes; providing requirements for processing  
39 certain permit applications; prohibiting  
40 municipalities and counties from certain actions  
41 relating to certain aerial or underground  
42 communications facilities; specifying limitations and  
43 requirements for certain municipal and county rules  
44 and regulations; revising definitions under the  
45 Advanced Wireless Infrastructure Deployment Act;  
46 prohibiting certain actions by an authority relating  
47 to certain utility poles; prohibiting authorities from  
48 requiring permit applicants to provide certain  
49 information, except under certain circumstances;  
50 adding prohibited acts by authorities relating to  
51 small wireless facilities, application requirements,  
52 public notification and public meetings, and the  
53 placement of certain facilities; revising  
54 applicability of authority rules and regulations  
55 governing the placement of utility poles in the public  
56 rights-of-way; providing construction relating to  
57 judicial review of certain application denials; adding  
58 grounds for an authority's denial of a proposed

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59 collocation of a small wireless facility in the public  
60 rights-of-way; deleting an authority's authorization  
61 to adopt ordinances for performance bonds and security  
62 funds; authorizing an authority to require a  
63 construction bond, subject to certain conditions;  
64 requiring authorities to accept certain financial  
65 instruments for certain financial obligations;  
66 authorizing providers to add authorities to certain  
67 financial instruments; prohibiting an authority from  
68 requiring a provider to indemnify the authority for  
69 certain liabilities; prohibiting an authority from  
70 requiring a permit, approval, fees, charges, costs, or  
71 exactions for certain activities; authorizing and  
72 limiting filings the authority may require relating to  
73 micro wireless facility equipment; providing an  
74 exception to a provision authorizing an authority to  
75 require a certain right-of-way permit; authorizing  
76 authorities to require wireless providers to comply  
77 with certain objective design standards adopted by  
78 ordinance; authorizing the authority to waive such  
79 design standards under certain circumstances;  
80 providing a requirement for the waiver; revising an  
81 authority's authorization to apply certain ordinances  
82 to applications filed before a certain timeframe;  
83 prohibiting authorities from certain actions relating  
84 to registrations, applications, permits, and approvals  
85 in relation to small wireless facilities; deleting a  
86 requirement for wireless providers to comply with  
87 certain undergrounding requirements; authorizing a

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88 civil action for violations; authorizing actions a  
89 court may take; providing applicability; providing an  
90 effective date.

91

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

93

94 Section 1. Paragraphs (a) and (b) of subsection (1) of  
95 section 202.12, Florida Statutes, are amended to read:

96 202.12 Sales of communications services.—The Legislature  
97 finds that every person who engages in the business of selling  
98 communications services at retail in this state is exercising a  
99 taxable privilege. It is the intent of the Legislature that the  
100 tax imposed by chapter 203 be administered as provided in this  
101 chapter.

102 (1) For the exercise of such privilege, a tax is levied on  
103 each taxable transaction and is due and payable as follows:

104 (a) Except as otherwise provided in this subsection, at the  
105 rate of 3.92 ~~4.92~~ percent applied to the sales price of the  
106 communications service that:

107 1. Originates and terminates in this state, or

108 2. Originates or terminates in this state and is charged to  
109 a service address in this state,

110

111 when sold at retail, computed on each taxable sale for the  
112 purpose of remitting the tax due. The gross receipts tax imposed  
113 by chapter 203 shall be collected on the same taxable  
114 transactions and remitted with the tax imposed by this  
115 paragraph. If no tax is imposed by this paragraph due to the  
116 exemption provided under s. 202.125(1), the tax imposed by

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117 chapter 203 shall nevertheless be collected and remitted in the  
118 manner and at the time prescribed for tax collections and  
119 remittances under this chapter.

120 (b) At the rate of 8.07 ~~9.07~~ percent applied to the retail  
121 sales price of any direct-to-home satellite service received in  
122 this state. The proceeds of the tax imposed under this paragraph  
123 shall be accounted for and distributed in accordance with s.  
124 202.18(2). The gross receipts tax imposed by chapter 203 shall  
125 be collected on the same taxable transactions and remitted with  
126 the tax imposed by this paragraph.

127 Section 2. Paragraph (b) of subsection (2) of section  
128 202.20, Florida Statutes, is amended to read:

129 202.20 Local communications services tax conversion rates.—

130 (2)

131 (b) Except as otherwise provided in this subsection,  
132 "replaced revenue sources," as used in this section, means the  
133 following taxes, charges, fees, or other impositions to the  
134 extent that the respective local taxing jurisdictions were  
135 authorized to impose them prior to July 1, 2000.

136 1. With respect to municipalities and charter counties and  
137 the taxes authorized by s. 202.19(1):

138 a. The public service tax on telecommunications authorized  
139 by former s. 166.231(9).

140 b. Franchise fees on cable service providers as authorized  
141 by 47 U.S.C. s. 542.

142 c. The public service tax on prepaid calling arrangements.

143 d. Franchise fees on dealers of communications services  
144 which use the public roads or rights-of-way, up to the limit set  
145 forth in s. 337.401. For purposes of calculating rates under

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146 this section, it is the legislative intent that charter counties  
147 be treated as having had the same authority as municipalities to  
148 impose franchise fees on recurring local telecommunication  
149 service revenues prior to July 1, 2000. However, the Legislature  
150 recognizes that the authority of charter counties to impose such  
151 fees is in dispute, and the treatment provided in this section  
152 is not an expression of legislative intent that charter counties  
153 actually do or do not possess such authority.

154 e. Actual permit fees relating to placing or maintaining  
155 facilities in or on public roads or rights-of-way, collected  
156 from providers of long-distance, cable, and mobile  
157 communications services for the fiscal year ending September 30,  
158 1999; however, if a municipality or charter county elects the  
159 option to charge permit fees pursuant to s. 337.401(3)(c)  
160 ~~337.401(3)(c)1.a.~~, such fees shall not be included as a replaced  
161 revenue source.

162 2. With respect to all other counties and the taxes  
163 authorized in s. 202.19(1), franchise fees on cable service  
164 providers as authorized by 47 U.S.C. s. 542.

165 Section 3. Subsection (3), paragraphs (e) and (f) of  
166 subsection (6), and paragraphs (b), (c), (d), (e), (f), (g), and  
167 (i) of subsection (7) of section 337.401, Florida Statutes, are  
168 amended, and subsection (8) is added to that section, to read:

169 337.401 Use of right-of-way for utilities subject to  
170 regulation; permit; fees.—

171 (3)(a) Because of the unique circumstances applicable to  
172 providers of communications services, including, but not limited  
173 to, the circumstances described in paragraph (e) and the fact  
174 that federal and state law require the nondiscriminatory

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175 treatment of providers of telecommunications services, and  
176 because of the desire to promote competition among providers of  
177 communications services, it is the intent of the Legislature  
178 that municipalities and counties treat providers of  
179 communications services in a nondiscriminatory and competitively  
180 neutral manner, taking into account the distinct engineering,  
181 construction, operation, maintenance, public works, and safety  
182 requirements of the provider's facilities, when imposing rules  
183 or regulations governing the placement or maintenance of  
184 communications facilities in the public roads or rights-of-way.  
185 Rules or regulations imposed by a municipality or county  
186 relating to providers of communications services placing or  
187 maintaining communications facilities in its roads or rights-of-  
188 way must be generally applicable to all providers of  
189 communications services and, notwithstanding any other law, may  
190 not require a provider of communications services to apply for  
191 or enter into an individual license, franchise, or other  
192 agreement with the municipality or county as a condition of  
193 placing or maintaining communications facilities in its roads or  
194 rights-of-way. In addition to other reasonable rules or  
195 regulations that a municipality or county may adopt relating to  
196 the placement or maintenance of communications facilities in its  
197 roads or rights-of-way under this subsection or subsection (7),  
198 a municipality or county may require a provider of  
199 communications services that places or seeks to place facilities  
200 in its roads or rights-of-way to register with the municipality  
201 or county. To register, a provider of communications services  
202 only may be required to provide its name ~~and to provide the name~~  
203 ~~of the registrant;~~ the name, address, and telephone number of a

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204 contact person for the registrant; the number of the  
205 registrant's current certificate of authorization issued by the  
206 Florida Public Service Commission, the Federal Communications  
207 Commission, or the Department of State; and any required proof  
208 of insurance or self-insuring status adequate to defend and  
209 cover claims. A municipality or county may not require the  
210 provision of an inventory of communications facilities, maps,  
211 locations of such facilities, or other information by a  
212 registrant as a condition of registration, renewal, or for any  
213 other purpose; provided, however, that a municipality or county  
214 may require as part of a permit application that the applicant  
215 identify at-grade communications facilities within 25 feet of  
216 the proposed installation location for the placement of at-grade  
217 communications facilities. A municipality or county may not  
218 require registration renewal more frequently than every 5 years.  
219 A municipality or county may not require a provider to pay any  
220 fee, cost, or other charge for registration or renewal thereof.  
221 It is the intent of the Legislature that the placement,  
222 operation, maintenance, upgrading, and extension of  
223 communications facilities not be unreasonably interrupted or  
224 delayed through the permitting or other local regulatory  
225 process. Except as provided in this chapter or otherwise  
226 expressly authorized by chapter 202, chapter 364, or chapter  
227 610, a municipality or county may not adopt or enforce any  
228 ordinance, regulation, or requirement as to the placement or  
229 operation of communications facilities in a right-of-way by a  
230 communications services provider authorized by state or local  
231 law to operate in a right-of-way; regulate any communications  
232 services; or impose or collect any tax, fee, cost, charge, or

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233 exaction for the provision of communications services over the  
234 communications services provider's communications facilities in  
235 a right-of-way.

236 (b) Registration described in paragraph (a) does not  
237 establish a right to place or maintain, or priority for the  
238 placement or maintenance of, a communications facility in roads  
239 or rights-of-way of a municipality or county. Each municipality  
240 and county retains the authority to regulate and manage  
241 municipal and county roads or rights-of-way in exercising its  
242 police power, subject to the limitations imposed in this section  
243 and chapters 202 and 610. Any rules or regulations adopted by a  
244 municipality or county which govern the occupation of its roads  
245 or rights-of-way by providers of communications services must be  
246 related to the placement or maintenance of facilities in such  
247 roads or rights-of-way, must be reasonable and  
248 nondiscriminatory, and may include only those matters necessary  
249 to manage the roads or rights-of-way of the municipality or  
250 county.

251 (c) Any municipality or county that, as of January 1, 2019,  
252 elected to require permit fees from any provider of  
253 communications services that uses or occupy municipal or county  
254 road or rights-of-way pursuant to former paragraph (c) or  
255 paragraph (j), Florida Statutes 2018, may continue to require  
256 and collect such fees. A municipality or county that elected as  
257 of such date to require permit fees may elect to forego such  
258 fees as provided herein. A municipality or county that elected  
259 as of such date not to require permit fees may not elect to  
260 impose permit fees.

261 ~~1. It is the intention of the state to treat all providers~~



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262 ~~of communications services that use or occupy municipal or~~  
263 ~~charter county roads or rights-of-way for the provision of~~  
264 ~~communications services in a nondiscriminatory and competitively~~  
265 ~~neutral manner with respect to the payment of permit fees.~~  
266 ~~Certain providers of communications services have been granted~~  
267 ~~by general law the authority to offset permit fees against~~  
268 ~~franchise or other fees while other providers of communications~~  
269 ~~services have not been granted this authority. In order to treat~~  
270 ~~all providers of communications services in a nondiscriminatory~~  
271 ~~and competitively neutral manner with respect to the payment of~~  
272 ~~permit fees, each municipality and charter county shall make an~~  
273 ~~election under either sub-subparagraph a. or sub-subparagraph b.~~  
274 ~~and must inform the Department of Revenue of the election by~~  
275 ~~certified mail by July 16, 2001. Such election shall take effect~~  
276 ~~October 1, 2001.~~

277 ~~a.(I) The municipality or charter county may require and~~  
278 ~~collect permit fees from any providers of communications~~  
279 ~~services that use or occupy municipal or county roads or rights-~~  
280 ~~of-way. All fees authorized ~~permitted~~ under this paragraph ~~sub-~~~~

281 ~~subparagraph~~ must be reasonable and commensurate with the direct  
282 and actual cost of the regulatory activity, including issuing  
283 and processing permits, plan reviews, physical inspection, and  
284 direct administrative costs; must be demonstrable; and must be  
285 equitable among users of the roads or rights-of-way. A fee  
286 authorized ~~permitted~~ under this paragraph ~~sub-subparagraph~~ may  
287 ~~not~~ be offset against the tax imposed under chapter 202;  
288 include the costs of roads or rights-of-way acquisition or roads  
289 or rights-of-way rental; include any general administrative,  
290 management, or maintenance costs of the roads or rights-of-way;

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291 or be based on a percentage of the value or costs associated  
292 with the work to be performed on the roads or rights-of-way. In  
293 an action to recover amounts due for a fee not authorized  
294 ~~permitted~~ under this paragraph ~~sub-subparagraph~~, the prevailing  
295 party may recover court costs and attorney ~~attorney's~~ fees at  
296 trial and on appeal. In addition to the limitations set forth in  
297 this section, a fee levied by a municipality or charter county  
298 under this paragraph ~~sub-subparagraph~~ may not exceed \$100.  
299 However, permit fees may not be imposed with respect to permits  
300 that may be required for service drop lines not required to be  
301 noticed under s. 556.108(5) ~~s. 556.108(5)(a)2.~~ or for any  
302 activity that does not require the physical disturbance of the  
303 roads or rights-of-way or does not impair access to or full use  
304 of the roads or rights-of-way, including, but not limited to,  
305 any emergency repairs of existing lawfully placed facilities,  
306 extensions of such facilities for providing communications  
307 services to customers, and the placement of micro wireless  
308 facilities in accordance with subparagraph (7)(e)3.

309 ~~(II) To ensure competitive neutrality among providers of~~  
310 ~~communications services, for any municipality or charter county~~  
311 ~~that elects to exercise its authority to require and collect~~  
312 ~~permit fees under this sub-subparagraph, the rate of the local~~  
313 ~~communications services tax imposed by such jurisdiction, as~~  
314 ~~computed under s. 202.20, shall automatically be reduced by a~~  
315 ~~rate of 0.12 percent.~~

316 ~~b. Alternatively, the municipality or charter county may~~  
317 ~~elect not to require and collect permit fees from any provider~~  
318 ~~of communications services that uses or occupies municipal or~~  
319 ~~charter county roads or rights-of-way for the provision of~~

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320 ~~communications services; however, each municipality or charter~~  
321 ~~county that elects to operate under this sub-subparagraph~~  
322 ~~retains all authority to establish rules and regulations for~~  
323 ~~providers of communications services to use or occupy roads or~~  
324 ~~rights of way as provided in this section.~~

325 1. ~~If a municipality or charter county elects to not~~  
326 ~~require permit fees operate under this sub-subparagraph, the~~  
327 ~~total rate for the local communications services tax as computed~~  
328 ~~under s. 202.20 for that municipality or charter county may be~~  
329 ~~increased by ordinance or resolution by an amount not to exceed~~  
330 ~~a rate of 0.12 percent. If a municipality or charter county~~  
331 ~~elects to increase its rate effective October 1, 2001, the~~  
332 ~~municipality or charter county shall inform the department of~~  
333 ~~such increased rate by certified mail postmarked on or before~~  
334 ~~July 16, 2001.~~

335 ~~e. A municipality or charter county that does not make an~~  
336 ~~election as provided for in this subparagraph shall be presumed~~  
337 ~~to have elected to operate under the provisions of sub-~~  
338 ~~subparagraph b.~~

339 2. ~~Each noncharter county shall make an election under~~  
340 ~~either sub-subparagraph a. or sub-subparagraph b. and shall~~  
341 ~~inform the Department of Revenue of the election by certified~~  
342 ~~mail by July 16, 2001. Such election shall take effect October~~  
343 ~~1, 2001.~~

344 a. ~~The noncharter county may elect to require and collect~~  
345 ~~permit fees from any providers of communications services that~~  
346 ~~use or occupy noncharter county roads or rights of way. All fees~~  
347 ~~permitted under this sub-subparagraph must be reasonable and~~  
348 ~~commensurate with the direct and actual cost of the regulatory~~

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349 ~~activity, including issuing and processing permits, plan~~  
350 ~~reviews, physical inspection, and direct administrative costs;~~  
351 ~~must be demonstrable; and must be equitable among users of the~~  
352 ~~roads or rights-of-way. A fee permitted under this sub-~~  
353 ~~subparagraph may not: be offset against the tax imposed under~~  
354 ~~chapter 202; include the costs of roads or rights-of-way~~  
355 ~~acquisition or roads or rights-of-way rental; include any~~  
356 ~~general administrative, management, or maintenance costs of the~~  
357 ~~roads or rights-of-way; or be based on a percentage of the value~~  
358 ~~or costs associated with the work to be performed on the roads~~  
359 ~~or rights-of-way. In an action to recover amounts due for a fee~~  
360 ~~not permitted under this sub-subparagraph, the prevailing party~~  
361 ~~may recover court costs and attorney's fees at trial and on~~  
362 ~~appeal. In addition to the limitations set forth in this~~  
363 ~~section, a fee levied by a noncharter county under this sub-~~  
364 ~~subparagraph may not exceed \$100. However, permit fees may not~~  
365 ~~be imposed with respect to permits that may be required for~~  
366 ~~service drop lines not required to be noticed under s.~~  
367 ~~556.108(5)(a)2. or for any activity that does not require the~~  
368 ~~physical disturbance of the roads or rights-of-way or does not~~  
369 ~~impair access to or full use of the roads or rights-of-way.~~

370 ~~b. Alternatively, the noncharter county may elect not to~~  
371 ~~require and collect permit fees from any provider of~~  
372 ~~communications services that uses or occupies noncharter county~~  
373 ~~roads or rights-of-way for the provision of communications~~  
374 ~~services; however, each noncharter county that elects to operate~~  
375 ~~under this sub-subparagraph shall retain all authority to~~  
376 ~~establish rules and regulations for providers of communications~~  
377 ~~services to use or occupy roads or rights-of-way as provided in~~

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378 ~~this section.~~

379 2. If a noncharter county elects to not require permit fees  
380 ~~operate under this sub-subparagraph,~~ the total rate for the  
381 local communications services tax as computed under s. 202.20  
382 for that noncharter county may be increased by ordinance or  
383 resolution by an amount not to exceed a rate of 0.24 percent, to  
384 replace the revenue the noncharter county would otherwise have  
385 received from permit fees for providers of communications  
386 services. ~~If a noncharter county elects to increase its rate~~  
387 ~~effective October 1, 2001, the noncharter county shall inform~~  
388 ~~the department of such increased rate by certified mail~~  
389 ~~postmarked on or before July 16, 2001.~~

390 ~~e. A noncharter county that does not make an election as~~  
391 ~~provided for in this subparagraph shall be presumed to have~~  
392 ~~elected to operate under the provisions of sub-subparagraph b.~~

393 ~~3. Except as provided in this paragraph, municipalities and~~  
394 ~~counties retain all existing authority to require and collect~~  
395 ~~permit fees from users or occupants of municipal or county roads~~  
396 ~~or rights-of-way and to set appropriate permit fee amounts.~~

397 ~~(d) After January 1, 2001,~~ In addition to any other notice  
398 requirements, a municipality must provide to the Secretary of  
399 State, at least 10 days prior to consideration on first reading,  
400 notice of a proposed ordinance governing a telecommunications  
401 company placing or maintaining telecommunications facilities in  
402 its roads or rights-of-way. ~~After January 1, 2001,~~ In addition  
403 to any other notice requirements, a county must provide to the  
404 Secretary of State, at least 15 days prior to consideration at a  
405 public hearing, notice of a proposed ordinance governing a  
406 telecommunications company placing or maintaining

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407 telecommunications facilities in its roads or rights-of-way. The  
408 notice required by this paragraph must be published by the  
409 Secretary of State on a designated Internet website. The failure  
410 of a municipality or county to provide such notice does not  
411 render the ordinance invalid, provided that enforcement of such  
412 ordinance must be suspended until the municipality or county  
413 provides the required notice and duly considers amendments from  
414 affected persons.

415 (e) The authority of municipalities and counties to require  
416 franchise fees from providers of communications services, with  
417 respect to the provision of communications services, is  
418 specifically preempted by the state because of unique  
419 circumstances applicable to providers of communications services  
420 when compared to other utilities occupying municipal or county  
421 roads or rights-of-way. Providers of communications services may  
422 provide similar services in a manner that requires the placement  
423 of facilities in municipal or county roads or rights-of-way or  
424 in a manner that does not require the placement of facilities in  
425 such roads or rights-of-way. Although similar communications  
426 services may be provided by different means, the state desires  
427 to treat providers of communications services in a  
428 nondiscriminatory manner and to have the taxes, franchise fees,  
429 and other fees, costs, and financial or regulatory exactions  
430 paid by or imposed on providers of communications services be  
431 competitively neutral. Municipalities and counties retain all  
432 existing authority, if any, to collect franchise fees from users  
433 or occupants of municipal or county roads or rights-of-way other  
434 than providers of communications services, and the provisions of  
435 this subsection shall have no effect upon this authority. The

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436 provisions of this subsection do not restrict the authority, if  
437 any, of municipalities or counties or other governmental  
438 entities to receive reasonable rental fees based on fair market  
439 value for the use of public lands and buildings on property  
440 outside the public roads or rights-of-way for the placement of  
441 communications antennas and towers.

442 (f) Except as expressly allowed or authorized by general  
443 law and except for the rights-of-way permit fees subject to  
444 paragraph (c), a municipality or county may not levy on a  
445 provider of communications services a tax, fee, or other charge  
446 or imposition for operating as a provider of communications  
447 services within the jurisdiction of the municipality or county  
448 which is in any way related to using its roads or rights-of-way.  
449 A municipality or county may not require or solicit in-kind  
450 compensation, except as otherwise provided in s. 202.24(2)(c)8.  
451 or s. 610.109, provided that the in-kind compensation is not a  
452 franchise fee under federal law. Nothing in this paragraph shall  
453 impair any ordinance or agreement in effect on May 22, 1998, or  
454 any voluntary agreement entered into subsequent to that date,  
455 which provides for or allows in-kind compensation by a  
456 telecommunications company.

457 (g) A municipality or county may not use its authority over  
458 the placement of facilities in its roads and rights-of-way as a  
459 basis for asserting or exercising regulatory control over a  
460 provider of communications services regarding matters within the  
461 exclusive jurisdiction of the Florida Public Service Commission  
462 or the Federal Communications Commission, including, but not  
463 limited to, the operations, systems, equipment, technology,  
464 qualifications, services, service quality, service territory,

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465 and prices of a provider of communications services. A  
466 municipality or county may not require any permit for the  
467 installation, placement, maintenance, or replacement of aerial  
468 wireline communications facilities on or between existing  
469 utility poles by a communications services provider; provided,  
470 however, that a municipality or county may require a right-of-  
471 way permit for work that involves excavation, closure of a  
472 sidewalk, or closure of a vehicular lane, unless the provider is  
473 making emergency restoration or repair work to existing lawfully  
474 placed facilities. Any permit application required by an  
475 authority under this section for the placement of communications  
476 facilities must be processed and acted upon consistent with the  
477 timeframes provided in subparagraphs (7) (d) 7.-9. In addition, a  
478 municipality or county may not require any permit or other  
479 approval, fee, charge, or cost, or other exaction for the  
480 extension, routine maintenance and repair, or replacement and  
481 upgrade of existing aerial or underground communications  
482 facilities located on private property outside of the public  
483 rights-of-way.

484 (h) A provider of communications services that has obtained  
485 permission to occupy the roads or rights-of-way of an  
486 incorporated municipality pursuant to s. 362.01 or that is  
487 otherwise lawfully occupying the roads or rights-of-way of a  
488 municipality or county shall not be required to obtain consent  
489 to continue such lawful occupation of those roads or rights-of-  
490 way; however, nothing in this paragraph shall be interpreted to  
491 limit the power of a municipality or county to adopt or enforce  
492 reasonable rules or regulations as provided in this section and  
493 consistent with chapters 202, 364, and 610. Any such rules or



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494 regulations must be in writing, and providers of communications  
495 services in the municipality or county must be given at least 60  
496 days advance written notice of any changes to the rules and  
497 regulations.

498 (i) Except as expressly provided in this section, this  
499 section does not modify the authority of municipalities and  
500 counties to levy the tax authorized in chapter 202 or the duties  
501 of providers of communications services under ss. 337.402-  
502 337.404. This section does not apply to building permits, pole  
503 attachments, or private roads, private easements, and private  
504 rights-of-way.

505 ~~(j) Pursuant to this paragraph, any county or municipality~~  
506 ~~may by ordinance change either its election made on or before~~  
507 ~~July 16, 2001, under paragraph (c) or an election made under~~  
508 ~~this paragraph.~~

509 ~~1.a. If a municipality or charter county changes its~~  
510 ~~election under this paragraph in order to exercise its authority~~  
511 ~~to require and collect permit fees in accordance with this~~  
512 ~~subsection, the rate of the local communications services tax~~  
513 ~~imposed by such jurisdiction pursuant to ss. 202.19 and 202.20~~  
514 ~~shall automatically be reduced by the sum of 0.12 percent plus~~  
515 ~~the percentage, if any, by which such rate was increased~~  
516 ~~pursuant to sub-subparagraph (c)1.b.~~

517 ~~b. If a municipality or charter county changes its election~~  
518 ~~under this paragraph in order to discontinue requiring and~~  
519 ~~collecting permit fees, the rate of the local communications~~  
520 ~~services tax imposed by such jurisdiction pursuant to ss. 202.19~~  
521 ~~and 202.20 may be increased by ordinance or resolution by an~~  
522 ~~amount not to exceed 0.24 percent.~~

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523       ~~2.a. If a noncharter county changes its election under this~~  
524 ~~paragraph in order to exercise its authority to require and~~  
525 ~~collect permit fees in accordance with this subsection, the rate~~  
526 ~~of the local communications services tax imposed by such~~  
527 ~~jurisdiction pursuant to ss. 202.19 and 202.20 shall~~  
528 ~~automatically be reduced by the percentage, if any, by which~~  
529 ~~such rate was increased pursuant to sub-subparagraph (c)2.b.~~

530       ~~b. If a noncharter county changes its election under this~~  
531 ~~paragraph in order to discontinue requiring and collecting~~  
532 ~~permit fees, the rate of the local communications services tax~~  
533 ~~imposed by such jurisdiction pursuant to ss. 202.19 and 202.20~~  
534 ~~may be increased by ordinance or resolution by an amount not to~~  
535 ~~exceed 0.24 percent.~~

536       ~~3.a. Any change of election pursuant to this paragraph and~~  
537 ~~any tax rate change resulting from such change of election shall~~  
538 ~~be subject to the notice requirements of s. 202.21; however, no~~  
539 ~~such change of election shall become effective prior to January~~  
540 ~~1, 2003.~~

541       ~~b. Any county or municipality changing its election under~~  
542 ~~this paragraph in order to exercise its authority to require and~~  
543 ~~collect permit fees shall, in addition to complying with the~~  
544 ~~notice requirements under s. 202.21, provide to all dealers~~  
545 ~~providing communications services in such jurisdiction written~~  
546 ~~notice of such change of election by September 1 immediately~~  
547 ~~preceding the January 1 on which such change of election becomes~~  
548 ~~effective. For purposes of this sub-subparagraph, dealers~~  
549 ~~providing communications services in such jurisdiction shall~~  
550 ~~include every dealer reporting tax to such jurisdiction pursuant~~  
551 ~~to s. 202.37 on the return required under s. 202.27 to be filed~~

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552 ~~on or before the 20th day of May immediately preceding the~~  
553 ~~January 1 on which such change of election becomes effective.~~

554 ~~(k)~~ Notwithstanding the provisions of s. 202.19, when a  
555 local communications services tax rate is changed as a result of  
556 an election made or changed under this subsection, such rate may  
557 ~~shall~~ not be rounded to tenths.

558 (6)

559 (e) This subsection does not alter any provision of this  
560 section or s. 202.24 relating to taxes, fees, or other charges  
561 or impositions by a municipality or county on a dealer of  
562 communications services or authorize that any charges be  
563 assessed on a dealer of communications services, except as  
564 specifically set forth herein. A municipality or county may not  
565 charge a pass-through provider any amounts other than the  
566 charges under this subsection as a condition to the placement or  
567 maintenance of a communications facility in the roads or rights-  
568 of-way of a municipality or county by a pass-through provider,  
569 except that a municipality or county may impose permit fees on a  
570 pass-through provider consistent with paragraph (3)(c) ~~if the~~  
571 ~~municipality or county elects to exercise its authority to~~  
572 ~~collect permit fees under paragraph (3)(e).~~

573 (f) The charges under this subsection do not apply to  
574 communications facilities placed in a municipality's or county's  
575 rights-of-way prior to the effective date of this subsection  
576 with permission from the municipality or county, if any was  
577 required, except to the extent the facilities of a pass-through  
578 provider were subject to per linear foot or mile charges in  
579 effect as of October 1, 2001, in which case the municipality or  
580 county may only impose on a pass-through provider charges

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581 consistent with paragraph (b) or paragraph (c) for such  
582 facilities. Notwithstanding the foregoing, this subsection does  
583 not impair any written agreement between a pass-through provider  
584 and a municipality or county imposing per linear foot or mile  
585 charges for communications facilities placed in municipal or  
586 county roads or rights-of-way that is in effect prior to the  
587 effective date of this subsection. Upon the termination or  
588 expiration of any such written agreement, any charges imposed  
589 must shall be consistent with this section ~~paragraph (b) or~~  
590 ~~paragraph (c). Notwithstanding the foregoing, until October 1,~~  
591 ~~2005, this subsection shall not affect a municipality or county~~  
592 ~~continuing to impose charges in excess of the charges authorized~~  
593 ~~in this subsection on facilities of a pass-through provider that~~  
594 ~~is not a dealer of communications services in the state under~~  
595 ~~chapter 202, but only to the extent such charges were imposed by~~  
596 ~~municipal or county ordinance or resolution adopted prior to~~  
597 ~~February 1, 2002. Effective October 1, 2005, any charges imposed~~  
598 ~~shall be consistent with paragraph (b) or paragraph (c).~~

599 (7)

600 (b) As used in this subsection, the term:

601 1. "Antenna" means communications equipment that transmits  
602 or receives electromagnetic radio frequency signals used in  
603 providing wireless services.

604 2. "Applicable codes" means uniform building, fire,  
605 electrical, plumbing, or mechanical codes adopted by a  
606 recognized national code organization or local amendments to  
607 those codes enacted solely to address threats of destruction of  
608 property or injury to persons, ~~or local codes or ordinances~~  
609 ~~adopted to implement this subsection. The term includes~~

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610 ~~objective design standards adopted by ordinance that may require~~  
611 ~~a new utility pole that replaces an existing utility pole to be~~  
612 ~~of substantially similar design, material, and color or that may~~  
613 ~~require reasonable spacing requirements concerning the location~~  
614 ~~of ground-mounted equipment. The term includes objective design~~  
615 ~~standards adopted by ordinance that may require a small wireless~~  
616 ~~facility to meet reasonable location context, color, stealth,~~  
617 ~~and concealment requirements; however, such design standards may~~  
618 ~~be waived by the authority upon a showing that the design~~  
619 ~~standards are not reasonably compatible for the particular~~  
620 ~~location of a small wireless facility or that the design~~  
621 ~~standards impose an excessive expense. The waiver shall be~~  
622 ~~granted or denied within 45 days after the date of the request.~~

623 3. "Applicant" means a person who submits an application  
624 and is a wireless provider.

625 4. "Application" means a request submitted by an applicant  
626 to an authority for a permit to collocate small wireless  
627 facilities or to place a new utility pole used to support a  
628 small wireless facility.

629 5. "Authority" means a county or municipality having  
630 jurisdiction and control of the rights-of-way of any public  
631 road. The term does not include the Department of  
632 Transportation. Rights-of-way under the jurisdiction and control  
633 of the department are excluded from this subsection.

634 6. "Authority utility pole" means a utility pole owned by  
635 an authority in the right-of-way. The term does not include a  
636 utility pole owned by a municipal electric utility, a utility  
637 pole used to support municipally owned or operated electric  
638 distribution facilities, or a utility pole located in the right-

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639 of-way within:

640 a. A retirement community that:

641 (I) Is deed restricted as housing for older persons as  
642 defined in s. 760.29(4) (b);

643 (II) Has more than 5,000 residents; and

644 (III) Has underground utilities for electric transmission  
645 or distribution.

646 b. A municipality that:

647 (I) Is located on a coastal barrier island as defined in s.  
648 161.053(1) (b)3.;

649 (II) Has a land area of less than 5 square miles;

650 (III) Has less than 10,000 residents; and

651 (IV) Has, before July 1, 2017, received referendum approval  
652 to issue debt to finance municipal-wide undergrounding of its  
653 utilities for electric transmission or distribution.

654 7. "Collocate" or "collocation" means to install, mount,  
655 maintain, modify, operate, or replace one or more wireless  
656 facilities on, under, within, or adjacent to a wireless support  
657 structure or utility pole. The term does not include the  
658 installation of a new utility pole or wireless support structure  
659 in the public rights-of-way.

660 8. "FCC" means the Federal Communications Commission.

661 9. "Micro wireless facility" means a small wireless  
662 facility having dimensions no larger than 24 inches in length,  
663 15 inches in width, and 12 inches in height and an exterior  
664 antenna, if any, no longer than 11 inches.

665 10. "Small wireless facility" means a wireless facility  
666 that meets the following qualifications:

667 a. Each antenna associated with the facility is located

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668 inside an enclosure of no more than 6 cubic feet in volume or,  
669 in the case of antennas that have exposed elements, each antenna  
670 and all of its exposed elements could fit within an enclosure of  
671 no more than 6 cubic feet in volume; and

672 b. All other wireless equipment associated with the  
673 facility is cumulatively no more than 28 cubic feet in volume.  
674 The following types of associated ancillary equipment are not  
675 included in the calculation of equipment volume: electric  
676 meters, concealment elements, telecommunications demarcation  
677 boxes, ground-based enclosures, grounding equipment, power  
678 transfer switches, cutoff switches, vertical cable runs for the  
679 connection of power and other services, and utility poles or  
680 other support structures.

681 11. "Utility pole" means a pole or similar structure that  
682 is used in whole or in part to provide communications services  
683 or for electric distribution, lighting, traffic control,  
684 signage, or a similar function. The term includes the vertical  
685 support structure for traffic lights but does not include a  
686 horizontal structure to which signal lights or other traffic  
687 control devices are attached and does not include a pole or  
688 similar structure 15 feet in height or less unless an authority  
689 grants a waiver for such pole.

690 12. "Wireless facility" means equipment at a fixed location  
691 which enables wireless communications between user equipment and  
692 a communications network, including radio transceivers,  
693 antennas, wires, coaxial or fiber-optic cable or other cables,  
694 regular and backup power supplies, and comparable equipment,  
695 regardless of technological configuration, and equipment  
696 associated with wireless communications. The term includes small

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697 wireless facilities. The term does not include:

698 a. The structure or improvements on, under, within, or  
699 adjacent to the structure on which the equipment is collocated;

700 b. Wireline backhaul facilities; or

701 c. Coaxial or fiber-optic cable that is between wireless  
702 structures or utility poles or that is otherwise not immediately  
703 adjacent to or directly associated with a particular antenna.

704 13. "Wireless infrastructure provider" means a person who  
705 has been certificated under chapter 364 to provide  
706 telecommunications service ~~in the state~~ or under chapter 610 to  
707 provide cable or video services in this state, or that person's  
708 affiliate, and who builds or installs wireless communication  
709 transmission equipment, wireless facilities, or wireless support  
710 structures but is not a wireless services provider.

711 14. "Wireless provider" means a wireless infrastructure  
712 provider or a wireless services provider.

713 15. "Wireless services" means any services provided using  
714 licensed or unlicensed spectrum, whether at a fixed location or  
715 mobile, using wireless facilities.

716 16. "Wireless services provider" means a person who  
717 provides wireless services.

718 17. "Wireless support structure" means a freestanding  
719 structure, such as a monopole, a guyed or self-supporting tower,  
720 or another existing or proposed structure designed to support or  
721 capable of supporting wireless facilities. The term does not  
722 include a utility pole, pedestal, or other support structure for  
723 ground-based equipment not mounted on a utility pole and less  
724 than 10 feet in height.

725 (c) Except as provided in this subsection, an authority may



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726 not prohibit, regulate, or charge for the collocation of small  
727 wireless facilities in the public rights-of-way or for the  
728 installation, maintenance, modification, operation, or  
729 replacement of utility poles used for the collocation of small  
730 wireless facilities in the public rights-of-way.

731 (d) An authority may require a registration process and  
732 permit fees in accordance with subsection (3). An authority  
733 shall accept applications for permits and shall process and  
734 issue permits subject to the following requirements:

735 1. An authority may not directly or indirectly require an  
736 applicant to perform services unrelated to the collocation for  
737 which approval is sought, such as in-kind contributions to the  
738 authority, including reserving fiber, conduit, or pole space for  
739 the authority.

740 2. An applicant may not be required to provide more  
741 information to obtain a permit than is necessary to demonstrate  
742 the applicant's compliance with applicable codes for the  
743 placement of small wireless facilities in the locations  
744 identified in the application. An applicant may not be required  
745 to provide inventories, maps, or locations of communications  
746 facilities in the right-of-way other than as necessary to avoid  
747 interference with other at-grade facilities located at the  
748 specific location proposed for a small wireless facility or  
749 within 25 feet of such location.

750 3. An authority may not:

751 a. Require the placement of small wireless facilities on  
752 any specific utility pole or category of poles; ~~or~~

753 b. Require the placement of multiple antenna systems on a  
754 single utility pole;

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755 c. Require a demonstration that collocation of a small  
756 wireless facility on an existing structure is not legally or  
757 technically possible as a condition for granting a permit for  
758 the collocation of a small wireless facility on a new utility  
759 pole;

760 d. Require compliance with an authority's provisions  
761 regarding placement of small wireless facilities or a new  
762 utility pole used to support a small wireless facility in  
763 rights-of-way not under the control of the authority pursuant to  
764 a delegation from the department, or require such compliance as  
765 a condition to receive a permit that is ancillary to the permit  
766 for collocation of a small wireless facility, including an  
767 electrical permit;

768 e. Require a meeting before filing an application;

769 f. Require direct or indirect public notification or a  
770 public meeting for the placement of communication facilities in  
771 the right-of-way;

772 g. Limit the size or configuration of a small wireless  
773 facility or any of its components, if the small wireless  
774 facility complies with the size limits in this subsection;

775 h. Prohibit the installation of a new utility pole used to  
776 support the collocation of a small wireless facility if the  
777 installation otherwise meets the requirements of this  
778 subsection;

779 i. Require that any component of a small wireless facility  
780 be placed underground; or

781 j. Require that any existing communication facility be  
782 placed underground, except as provided in ss. 337.403 and  
783 337.404.

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784           4. Subject to sub-subparagraph (f)6.b., an authority may  
785 not limit the placement, by minimum separation distances, of  
786 small wireless facilities, utility poles on which small wireless  
787 facilities are or will be collocated, or other at-grade  
788 communications facilities ~~by minimum separation distances.~~

789 However, within 14 days after the date of filing the  
790 application, an authority may request that the proposed location  
791 of a small wireless facility be moved to another location in the  
792 right-of-way and placed on an alternative authority utility pole  
793 or support structure or placed on ~~may place~~ a new utility pole.  
794 The authority and the applicant may negotiate the alternative  
795 location, including any objective design standards and  
796 reasonable spacing requirements for ground-based equipment, for  
797 30 days after the date of the request. At the conclusion of the  
798 negotiation period, if the alternative location is accepted by  
799 the applicant, the applicant must notify the authority of such  
800 acceptance and the application shall be deemed granted for any  
801 new location for which there is agreement and all other  
802 locations in the application. If an agreement is not reached,  
803 the applicant must notify the authority of such nonagreement and  
804 the authority must grant or deny the original application within  
805 90 days after the date the application was filed. A request for  
806 an alternative location, an acceptance of an alternative  
807 location, or a rejection of an alternative location must be in  
808 writing and provided by electronic mail.

809           5. An authority shall limit the height of a small wireless  
810 facility to 10 feet above the utility pole or structure upon  
811 which the small wireless facility is to be collocated. Unless  
812 waived by an authority, the height for a new utility pole is

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813 limited to the tallest existing utility pole as of July 1, 2017,  
814 located in the same right-of-way, other than a utility pole for  
815 which a waiver has previously been granted, measured from grade  
816 in place within 500 feet of the proposed location of the small  
817 wireless facility. If there is no utility pole within 500 feet,  
818 the authority shall limit the height of the utility pole to 50  
819 feet.

820 6. ~~Except as provided in subparagraphs 4. and 5.,~~ The  
821 installation by a communications services provider of a utility  
822 pole in the public rights-of-way, other than a utility pole used  
823 ~~designed~~ to support a small wireless facility, is ~~shall be~~  
824 subject to authority rules or regulations governing the  
825 placement of utility poles in the public rights-of-way and is  
826 ~~shall be~~ subject to the application review timeframes in this  
827 subsection.

828 7. Within 14 days after receiving an application, an  
829 authority must determine and notify the applicant by electronic  
830 mail as to whether the application is complete. If an  
831 application is deemed incomplete, the authority must  
832 specifically identify the missing information. An application is  
833 deemed complete if the authority fails to provide notification  
834 to the applicant within 14 days.

835 8. An application must be processed on a nondiscriminatory  
836 basis. A complete application is deemed approved if an authority  
837 fails to approve or deny the application within 60 days after  
838 receipt of the application. If an authority does not use the 30-  
839 day negotiation period provided in subparagraph 4., the parties  
840 may mutually agree to extend the 60-day application review  
841 period. The authority shall grant or deny the application at the

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842 end of the extended period. A permit issued pursuant to an  
843 approved application shall remain effective for 1 year unless  
844 extended by the authority.

845 9. An authority must notify the applicant of approval or  
846 denial by electronic mail. An authority shall approve a complete  
847 application unless it does not meet the authority's applicable  
848 codes. If the application is denied, the authority must specify  
849 in writing the basis for denial, including the specific code  
850 provisions on which the denial was based, and send the  
851 documentation to the applicant by electronic mail on the day the  
852 authority denies the application. The applicant may cure the  
853 deficiencies identified by the authority and resubmit the  
854 application within 30 days after notice of the denial is sent to  
855 the applicant. The authority shall approve or deny the revised  
856 application within 30 days after receipt or the application is  
857 deemed approved. The review of a revised application is ~~Any~~  
858 ~~subsequent review shall be~~ limited to the deficiencies cited in  
859 the denial. The availability of any subsequent review by the  
860 authority does not bar review of a denial in a court of  
861 competent jurisdiction.

862 10. An applicant seeking to collocate small wireless  
863 facilities within the jurisdiction of a single authority may, at  
864 the applicant's discretion, file a consolidated application and  
865 receive a single permit for the collocation of up to 30 small  
866 wireless facilities. If the application includes multiple small  
867 wireless facilities, an authority may separately address small  
868 wireless facility collocations for which incomplete information  
869 has been received or which are denied.

870 11. An authority may deny a proposed collocation of a small

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871 wireless facility in the public rights-of-way if the proposed  
872 collocation:

873 a. Materially interferes with the safe operation of traffic  
874 control equipment.

875 b. Materially interferes with sight lines or clear zones  
876 for transportation, pedestrians, or public safety purposes.

877 c. Materially interferes with compliance with the Americans  
878 with Disabilities Act or similar federal or state standards  
879 regarding pedestrian access or movement.

880 d. Materially fails to comply with the 2010 edition of the  
881 Florida Department of Transportation Utility Accommodation  
882 Manual.

883 e. Fails to comply with applicable codes.

884 f. Fails to comply with objective design standards  
885 authorized under subparagraph (f) 6.

886 12. An authority may adopt by ordinance provisions for  
887 insurance coverage, indemnification, ~~performance bonds, security~~  
888 ~~funds~~, force majeure, abandonment, authority liability, or  
889 authority warranties. Such provisions must be reasonable and  
890 nondiscriminatory. An authority may require a construction bond  
891 to secure restoration of the postconstruction rights-of-way to  
892 its preconstruction condition. However, such bond must be time-  
893 limited to no more than 1 year after the construction to which  
894 the bond applies is completed. For any financial obligation  
895 required by an authority allowed under this section, the  
896 authority shall accept a letter of credit or similar financial  
897 instrument issued by any financial institution that is  
898 authorized to do business within the United States, provided  
899 that a claim against the financial instrument may be made by

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900 electronic means, including by facsimile. A provider of  
901 communications services may add an authority to any existing  
902 bond, insurance policy, or other relevant financial instrument,  
903 and the authority must accept such proof of coverage without any  
904 conditions. An authority may not require a communications  
905 services provider to indemnify it for liabilities not caused by  
906 the provider, including liabilities arising from the authority's  
907 negligence, gross negligence, or willful conduct.

908 13. Collocation of a small wireless facility on an  
909 authority utility pole does not provide the basis for the  
910 imposition of an ad valorem tax on the authority utility pole.

911 14. An authority may reserve space on authority utility  
912 poles for future public safety uses. However, a reservation of  
913 space may not preclude collocation of a small wireless facility.  
914 If replacement of the authority utility pole is necessary to  
915 accommodate the collocation of the small wireless facility and  
916 the future public safety use, the pole replacement is subject to  
917 make-ready provisions and the replaced pole shall accommodate  
918 the future public safety use.

919 15. A structure granted a permit and installed pursuant to  
920 this subsection shall comply with chapter 333 and federal  
921 regulations pertaining to airport airspace protections.

922 (e) An authority may not require any permit or other  
923 approval or require fees, ~~or other~~ charges, costs, or other  
924 exactions for:

925 1. Routine maintenance or repair work, including, but not  
926 limited to, emergency repairs of existing lawfully placed  
927 facilities, or extensions of such facilities, for providing  
928 communications services to customers;

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929           2. Replacement of existing wireless facilities with  
930 wireless facilities that are substantially similar or of the  
931 same or smaller size; or

932           3. Installation, placement, maintenance, or replacement of  
933 micro wireless facilities that are suspended on cables strung  
934 between existing utility poles in compliance with applicable  
935 codes by or for a communications services provider authorized to  
936 occupy the rights-of-way and who is remitting taxes under  
937 chapter 202. An authority may require an initial letter from or  
938 on behalf of such provider, which is effective upon filing,  
939 attesting that the micro wireless facility dimensions comply  
940 with the limits of this subsection. The authority may not  
941 require any additional filing or other information as long as  
942 the provider is deploying the same, a substantially similar, or  
943 a smaller size micro wireless facility equipment.

944  
945 Notwithstanding this paragraph, an authority may require a  
946 right-of-way permit for work that involves excavation, closure  
947 of a sidewalk, or closure of a vehicular lane unless the  
948 provider is making emergency restoration or repair work to  
949 existing lawfully placed facilities.

950           (f) Collocation of small wireless facilities on authority  
951 utility poles is subject to the following requirements:

952           1. An authority may not enter into an exclusive arrangement  
953 with any person for the right to attach equipment to authority  
954 utility poles.

955           2. The rates and fees for collocations on authority utility  
956 poles must be nondiscriminatory, regardless of the services  
957 provided by the collocating person.



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958           3. The rate to collocate small wireless facilities on an  
959 authority utility pole may not exceed \$150 per pole annually.

960           4. Agreements between authorities and wireless providers  
961 that are in effect on July 1, 2017, and that relate to the  
962 collocation of small wireless facilities in the right-of-way,  
963 including the collocation of small wireless facilities on  
964 authority utility poles, remain in effect, subject to applicable  
965 termination provisions. The wireless provider may accept the  
966 rates, fees, and terms established under this subsection for  
967 small wireless facilities and utility poles that are the subject  
968 of an application submitted after the rates, fees, and terms  
969 become effective.

970           5. A person owning or controlling an authority utility pole  
971 shall offer rates, fees, and other terms that comply with this  
972 subsection. By the later of January 1, 2018, or 3 months after  
973 receiving a request to collocate its first small wireless  
974 facility on a utility pole owned or controlled by an authority,  
975 the person owning or controlling the authority utility pole  
976 shall make available, through ordinance or otherwise, rates,  
977 fees, and terms for the collocation of small wireless facilities  
978 on the authority utility pole which comply with this subsection.

979           a. The rates, fees, and terms must be nondiscriminatory and  
980 competitively neutral and must comply with this subsection.

981           b. For an authority utility pole that supports an aerial  
982 facility used to provide communications services or electric  
983 service, the parties shall comply with the process for make-  
984 ready work under 47 U.S.C. s. 224 and implementing regulations.  
985 The good faith estimate of the person owning or controlling the  
986 pole for any make-ready work necessary to enable the pole to

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987 support the requested collocation must include pole replacement  
988 if necessary.

989 c. For an authority utility pole that does not support an  
990 aerial facility used to provide communications services or  
991 electric service, the authority shall provide a good faith  
992 estimate for any make-ready work necessary to enable the pole to  
993 support the requested collocation, including necessary pole  
994 replacement, within 60 days after receipt of a complete  
995 application. Make-ready work, including any pole replacement,  
996 must be completed within 60 days after written acceptance of the  
997 good faith estimate by the applicant. Alternatively, an  
998 authority may require the applicant seeking to collocate a small  
999 wireless facility to provide a make-ready estimate at the  
1000 applicant's expense for the work necessary to support the small  
1001 wireless facility, including pole replacement, and perform the  
1002 make-ready work. If pole replacement is required, the scope of  
1003 the make-ready estimate is limited to the design, fabrication,  
1004 and installation of a utility pole that is substantially similar  
1005 in color and composition. The authority may not condition or  
1006 restrict the manner in which the applicant obtains, develops, or  
1007 provides the estimate or conducts the make-ready work subject to  
1008 usual construction restoration standards for work in the right-  
1009 of-way. The replaced or altered utility pole shall remain the  
1010 property of the authority.

1011 d. An authority may not require more make-ready work than  
1012 is required to meet applicable codes or industry standards. Fees  
1013 for make-ready work may not include costs related to preexisting  
1014 damage or prior noncompliance. Fees for make-ready work,  
1015 including any pole replacement, may not exceed actual costs or

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1016 the amount charged to communications services providers other  
1017 than wireless services providers for similar work and may not  
1018 include any consultant fee or expense.

1019 6. An authority may require wireless providers to comply  
1020 with objective design standards adopted by ordinance. The  
1021 ordinance may require:

1022 a. A new utility pole that replaces an existing utility  
1023 pole to be of substantially similar design, material, and color;

1024 b. Reasonable spacing requirements concerning the location  
1025 of a ground-mounted component of a small wireless facility which  
1026 does not exceed 15 feet from the associated support structure;  
1027 or

1028 c. A small wireless facility to meet reasonable location  
1029 context, color, camouflage, and concealment requirements,  
1030 subject to the limitations in this subsection.

1031  
1032 Such design standards under this subparagraph may be waived by  
1033 the authority upon a showing that the design standards are not  
1034 reasonably compatible for the particular location of a small  
1035 wireless facility or are technically infeasible or that the  
1036 design standards impose an excessive expense. The waiver must be  
1037 granted or denied within 45 days after the date of the request.

1038 (g) For any applications filed before the effective date of  
1039 ordinances implementing this subsection, an authority may apply  
1040 current ordinances relating to placement of communications  
1041 facilities in the right-of-way related to registration,  
1042 permitting, insurance coverage, indemnification, ~~performance~~  
1043 ~~bonds, security funds,~~ force majeure, abandonment, authority  
1044 liability, or authority warranties. Permit application

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1045 requirements and small wireless facility placement requirements,  
1046 including utility pole height limits, that conflict with this  
1047 subsection ~~must shall~~ be waived by the authority. An authority  
1048 may not institute, either expressly or de facto, a moratorium,  
1049 zoning-in-progress, or other mechanism that would prohibit or  
1050 delay the filing, receiving, or processing of registrations,  
1051 applications, or issuing of permits or other approvals for the  
1052 collocation of small wireless facilities or the installation,  
1053 modification, or replacement of utility poles used to support  
1054 the collocation of small wireless facilities.

1055 ~~(i) A wireless provider shall, in relation to a small~~  
1056 ~~wireless facility, utility pole, or wireless support structure~~  
1057 ~~in the public rights-of-way, comply with nondiscriminatory~~  
1058 ~~undergrounding requirements of an authority that prohibit above-~~  
1059 ~~ground structures in public rights-of-way. Any such requirements~~  
1060 ~~may be waived by the authority.~~

1061 (8) (a) Any person aggrieved by a violation of this section  
1062 may bring a civil action in a United States District Court or in  
1063 any other court of competent jurisdiction.

1064 (b) The court may:

1065 1. Grant temporary or permanent injunctions on terms as it  
1066 may deem reasonable to prevent or restrain violations of this  
1067 section; and

1068 2. Direct the recovery of full costs, including awarding  
1069 reasonable attorney fees, to an aggrieved party who prevails.

1070 Section 4. The taxes imposed by s. 202.12, Florida  
1071 Statutes, as amended by this act, on communications services  
1072 shall be applied to communications services reflected on bills  
1073 dated on or after October 1, 2020.

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1074

Section 5. This act shall take effect July 1, 2019.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Appropriations Subcommittee on Criminal and Civil  
Justice, *Vice Chair*  
Criminal Justice  
Finance and Tax  
Innovation, Industry and Technology

### SENATOR RANDOLPH BRACY

11th District

March 8, 2019

The Honorable Chairman Wilton Simpson  
Chair, Senate Innovation, Industry & Technology Committee  
420 Senate Building  
404 S. Monroe St.  
Tallahassee, FL 32399-1100

Dear Chairman Simpson:

I have recently learned that a member of my family will undergo a serious medical procedure on Tuesday, March 12<sup>th</sup> 2019. I write to respectfully request that my absence during that day's Innovation, Industry, and Technology Committee meeting be excused. I sincerely regret that I cannot be present for the meeting during that day, and must attend to this important family matter.

Sincerely,

A handwritten signature in cursive script that reads "Randolph Bracy".

Senator Randolph Bracy

#### REPLY TO:

- 150 N. Lakeshore Drive, Ocoee, Florida 34761 (407) 656-6716 FAX: (888) 263-3814
- 213 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**BILL GALVANO**  
President of the Senate

**DAVID SIMMONS**  
President Pro Tempore

# CourtSmart Tag Report

Room: EL 110 Case No.:  
Caption: Senate Innovation, Industry, and Technology Committee

Type:  
Judge:

Started: 3/12/2019 1:33:40 PM  
Ends: 3/12/2019 3:00:38 PM Length: 01:26:59

1:33:43 PM Call to order  
1:34:05 PM Pledge of Allegiance  
1:34:37 PM Chair opening remarks  
1:34:52 PM Tab 1 Confirmation of Halsey Breshears  
1:39:17 PM Questions?  
1:39:25 PM Senator Gibson for a question  
1:40:52 PM Halsey Beshears to close  
1:42:50 PM Halsey Beshears is recommended favorably  
1:43:40 PM Tab 7 SB1000 by Senator Hutson  
1:44:07 PM Senator Hutson to explain the bill  
1:44:25 PM Take up Amendment 591504  
1:44:58 PM Senator Hutson for an explanation of the Amendment  
1:45:35 PM Questions on Amendment?  
1:45:46 PM Appearance Forms  
1:45:56 PM Charlie Dudley  
1:47:18 PM Tracy Hatch  
1:48:01 PM Doug Mannheimer waives in support  
1:48:10 PM Laura Lenhart waives in support  
1:48:21 PM Brewster Bevis waives in support  
1:48:27 PM Christie Pontis waives in support  
1:48:39 PM Amber Hughes, Florida League of Cities  
1:53:33 PM Senator Hutson for a question  
1:53:53 PM Amber Hughes answer  
1:54:23 PM Follow up by Senator Hutson  
1:54:36 PM Amber Hughes for an answer  
1:56:05 PM Senator Hutson for a question  
1:56:27 PM Amber Hughes for an answer  
1:57:02 PM Senator Bradley for a question  
1:57:20 PM Amber Hughes for an answer  
1:57:49 PM Senator Bradley for a question  
1:58:06 PM Amber Hughes for an answer  
1:58:23 PM Debate?  
1:58:29 PM Senator Hutson waives close  
1:58:35 PM Amendment 591504 adopted  
1:58:39 PM Back on the bill as amended  
1:58:47 PM Phillip Suderman waives in support Marva Johnson waives in support  
1:59:08 PM Brewster Bevis waives in support  
1:59:20 PM Christopher Emmanuel waives in support  
1:59:31 PM Eric Poole, Florida Association of Counties  
2:00:27 PM Logan Padgett waives in support  
2:00:38 PM Kyle Balloch waives in support  
2:00:46 PM Doug Mannheimer waives on support  
2:00:53 PM Debate?  
2:00:59 PM Chair Simpson for a comment  
2:01:06 PM Senator Hutson to close  
2:02:06 PM CS/SB 1000 is reported favorably  
2:02:29 PM Take up Tab 3 SB 198 by Senator Berman  
2:03:00 PM Senator Berman for an explanation  
2:03:24 PM Questions?  
2:03:29 PM Senator Braynon for a question  
2:03:47 PM Senator Berman for an answer  
2:03:56 PM Senator Benacquisto for a question

2:04:07 PM senator Berman for an answer  
2:04:38 PM Senator Gibson for a question  
2:04:57 PM Senator Berman for an answer  
2:05:42 PM Senator Braynon for a question  
2:06:02 PM Senator Berman for an answer  
2:06:52 PM Senator Bradley for a question  
2:07:04 PM Senator Berman for an answer  
2:07:25 PM Senator Bradley for a question  
2:07:38 PM Senator Braynon for a question  
2:07:54 PM Senator Benacquisto for a comment  
2:08:11 PM Senator Hutson for a question  
2:08:19 PM Senator Berman for an answer  
2:08:31 PM Appearance Forms  
2:08:38 PM Aimee Diaz Lyon  
2:08:48 PM Debate?  
2:08:54 PM Senator Berman waives close  
2:09:04 PM SB 198 is reported favorably  
2:09:31 PM Take up Tab 5 SB 334 by Senator Brandes  
2:09:51 PM Senator Brandes for an explanation  
2:10:56 PM Take up Amendment 131354  
2:11:09 PM Questions?  
2:11:16 PM Debate?  
2:11:24 PM Senator Benacquisto on the Amendment  
2:11:55 PM Senator Brandes for an answer  
2:12:23 PM Amendment is adopted  
2:12:27 PM Back on bill as amended  
2:12:37 PM Questions?  
2:12:40 PM Chair Simpson for a question  
2:12:45 PM Leader Gibson for a question  
2:13:00 PM Senator Brandes for an answer  
2:13:39 PM Leader Gibson for a question  
2:14:00 PM Senator Brandes for an answer  
2:14:32 PM Leader Gibson for a question  
2:14:43 PM Senator Brandes for a respose  
2:15:11 PM Leader Gibson for a question  
2:15:55 PM Senator Brandes for an answer  
2:16:52 PM Appearance forms  
2:16:59 PM Barney Bishop waives in support  
2:17:08 PM Phillip Suderman waives in support  
2:17:17 PM Christian Camara waives in support  
2:17:26 PM Logan Padgett waives in support  
2:17:35 PM Jorge Chamizo waives in support  
2:17:49 PM David Johnson waives in support  
2:17:59 PM James Drew waives in support  
2:18:07 PM DebTE?  
2:18:10 PM Senator Hutson  
2:18:21 PM Leader Gibson in debate  
2:19:08 PM Senator Brandes to close  
2:19:42 PM CS/SB 334 is reported favorably  
2:20:04 PM Take up Tab 6 SB 536  
2:20:14 PM Senator Brandes for an explanation  
2:20:56 PM Take up Amendment 184002  
2:21:06 PM Senator Brandes to explain the amendment  
2:22:31 PM Questions?  
2:22:36 PM Appearance forms  
2:22:46 PM Roy Colburn waives oin opposition  
2:23:00 PM Jim Millican waives in opposition  
2:23:09 PM Debate?  
2:23:12 PM Senator Farmer in debate  
2:24:01 PM Ray Colburn is recognized  
2:24:59 PM Senator Brandes in debate  
2:25:13 PM Senator Brandes to close



2:26:12 PM Amendment is adopted  
2:26:19 PM Back on the bill as amended  
2:26:25 PM questions?  
2:26:28 PM appearance Forms  
2:26:37 PM Barney Bishop waives in support  
2:26:46 PM Debate?  
2:26:47 PM Leader Gibson in debate  
2:27:31 PM Senator Brandes waives close  
2:27:38 PM CS/SB 536 is reported favorably  
2:27:57 PM Recording Paused  
2:34:59 PM Recording Resumed  
2:35:23 PM Take up Tab 2 SB 596 Senator Albritton  
2:36:23 PM Senator albritton for an explanation  
2:40:00 PM Questions?  
2:40:05 PM Senator Braynon for a question  
2:40:15 PM Senator albritton for an answer  
2:40:48 PM senator farmer for a question  
2:40:56 PM Senator Albritton for a response  
2:41:06 PM Leader Gibson for a question  
2:41:43 PM Senator Albritton for an answer  
2:43:05 PM Leader Gibson for a follow up  
2:43:23 PM Senator Albritton for answer  
2:46:08 PM Appearance forms  
2:46:12 PM Jim Spratt waives in support  
2:46:18 PM Phillip Suderman  
2:47:56 PM Senator Bradley for a question  
2:48:07 PM Phillip Suderman for an answer  
2:48:17 PM Senator Bradley for a follow up  
2:48:47 PM Phillip suderman for an answer  
2:48:59 PM Senator Bradley for a follow up  
2:49:06 PM Phillip suderman for an answer  
2:49:10 PM Senator Bradley for a follow up  
2:49:24 PM Phillip Suderman for an answer  
2:50:05 PM Senator Bradley for a follow up  
2:50:22 PM Phillip Suderman for an answer  
2:50:48 PM Roy Baker waives in support  
2:50:56 PM Jeff Hendry waives in support  
2:51:08 PM Christopher emmanuel waives in support  
2:51:17 PM Brewster bevis waives in support  
2:51:26 PM Chris Doolin waives in support  
2:51:34 PM Laura Youmans waives in support  
2:51:47 PM Debate?  
2:51:51 PM Senator Braynon  
2:52:41 PM Leader Gibson  
2:54:26 PM senator Farmer  
2:54:51 PM Senator Albritton to close  
2:56:24 PM SB 596 is reported favorably  
2:56:51 PM Take up Tab 4 SB 962 Senator Diaz  
2:57:06 PM senator Diaz for an explanation  
2:58:13 PM Questions?  
2:58:17 PM Appearance forms  
2:58:20 PM Brewster Bevis waives in support  
2:58:26 PM Grace Lovett waives in support  
2:58:42 PM Katie Saintfleur waives in support  
2:58:52 PM Jonathon Reeves waives in support  
2:59:03 PM Eli Notelus waives in support  
2:59:10 PM Scott Dick waives in support  
2:59:17 PM Debate?  
2:59:21 PM Senator diaz to close  
2:59:27 PM SB 962 is reported favorably  
2:59:52 PM Senator Bradley is recognized  
3:00:06 PM Meeting adjourned