

CS/SB 378 by **BI, Bean (CO-INTRODUCERS) Latvala, Grimsley, Detert;** (Similar to CS/CS/CS/H 0573)
Manufactured and Mobile Homes

CS/SB 594 by **BI, Bean;** (Compare to H 0709) Nursing Homes and Related Health Care Facilities

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CS/SB 1868 by **GO, Bean;** (Similar to CS/H 7135) Public Records/Payment Instrument Transaction/Office of Financial Regulation

CS/SB 1000 by **CJ, Gibson (CO-INTRODUCERS) Benacquisto, Brandes;** (Identical to CS/CS/H 1355) Purchase of Firearms by Mentally Ill Persons

CS/SB 1318 by **EE, Soto;** (Identical to CS/H 1075) Public Records/Complaint of Misconduct Against Agency Employee

SB 1680 by **Altman;** (Identical to H 0725) Public Records and Public Meetings/State Child Abuse Death Review Committee or Local Committee

CS/SB 626 by **ED, Bullard;** (Compare to CS/CS/H 0609) Bullying in the Public School System

CS/SB 262 by **BI, Smith;** (Similar to CS/H 0157) Delivery of Insurance Policies

CS/SB 304 by **GO, CJ;** (Similar to H 7079) OGSR/Agency Employee/Victim of Domestic Violence or Sexual Violence

CS/SB 836 by **BI, Simmons;** (Similar to CS/CS/H 0821) Insurer Solvency

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337146 A S L RCS RC, Simmons Delete L.447: 04/22 06:20 PM

SB 924 by **Latvala;** (Similar to H 0581) Dentists

CS/CS/SB 984 by **GO, EP, Richter (CO-INTRODUCERS) Smith;** (Similar to CS/CS/H 1085) Public Records/Natural Gas Storage Facility Permit

SB 1412 by **Richter;** (Similar to H 7015) Expert Testimony

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CS/CS/SB 1384 by **HP, JU, Galvano;** (Compare to H 0869) Nursing Home Litigation

SB 1864 by **EP;** (Identical to H 7157) Ratification of Rules Implementing Total Maximum Daily Loads for Impaired Water Bodies

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

RULES
Senator Thrasher, Chair
Senator Smith, Vice Chair

MEETING DATE: Monday, April 22, 2013
TIME: 2:00 —6:00 p.m.
PLACE: *Toni Jennings Committee Room, 110 Senate Office Building*

MEMBERS: Senator Thrasher, Chair; Senator Smith, Vice Chair; Senators Benacquisto, Diaz de la Portilla, Galvano, Gardiner, Latvala, Lee, Margolis, Montford, Negron, Richter, Ring, Simmons, and Sobel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 378 Banking and Insurance / Bean (Similar CS/CS/CS/H 573, Compare CS/S 1770)	Manufactured and Mobile Homes; Requiring the Citizens Property Insurance Corporation to provide coverage for mobile homes and related structures; specifying the procedure for requesting and obtaining funds from the Florida Mobile Home Relocation Trust Fund to pay for the operational costs of the Florida Mobile Home Relocation Corporation and the relocation costs of mobile home owners, etc. BI 03/14/2013 Fav/CS RI 04/02/2013 Favorable AP 04/18/2013 Favorable RC 04/22/2013 Favorable	Favorable Yeas 13 Nays 1
2	CS/SB 594 Banking and Insurance / Bean (Compare H 709, CS/CS/S 966, CS/CS/S 1724)	Nursing Homes and Related Health Care Facilities; Clarifying provisions to exempt certain clinics that receive reimbursement under the Florida Motor Vehicle No-Fault Law from licensure requirements in this state if they hold specific federal certification; extending the exemption to clinics that are owned by certain entities, etc. HP 03/20/2013 Favorable BI 04/16/2013 Fav/CS RC 04/22/2013 Fav/CS	Fav/CS Yeas 14 Nays 1
3	CS/SB 1868 Governmental Oversight and Accountability / Bean (Similar CS/H 7135, Compare CS/CS/H 217, Link S 410)	Public Records/Payment Instrument Transaction/Office of Financial Regulation; Providing an exemption from public records requirements for payment instrument transaction information held by the Office of Financial Regulation; authorizing the office to enter into information-sharing agreements and provide access to information contained in the database to certain governmental agencies; requiring a department or agency that receives confidential information to maintain the confidentiality of the information, except as otherwise required by court order, etc. GO 04/16/2013 Fav/CS RC 04/22/2013 Favorable	Favorable Yeas 15 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Monday, April 22, 2013, 2:00 —6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 1000 Criminal Justice / Gibson (Identical CS/CS/H 1355)	Purchase of Firearms by Mentally Ill Persons; Providing conditions under which a person who has been voluntarily admitted to a mental institution for treatment and has undergone an involuntary examination under the Baker Act may be prohibited from purchasing a firearm; providing requirements for the examining physician; providing requirements with respect to the filing of specified records with the court and presentation of such records to a judge or magistrate; providing lawful authority of a judge or magistrate to review specified records and order such records be submitted to the Department of Law Enforcement, etc. CJ 04/01/2013 Fav/CS JU 04/15/2013 Favorable RC 04/22/2013 Favorable	Favorable Yeas 14 Nays 0
5	CS/SB 1318 Ethics and Elections / Soto (Identical CS/H 1075)	Public Records/Complaint of Misconduct Against Agency Employee; Providing an exemption from public record requirements for a complaint of misconduct filed with an agency against an agency employee and all information obtained pursuant to an investigation of the complaint by the agency; providing for limited duration of the exemption; providing for future review and repeal of the exemption under the Open Government Sunset Review Act, etc. EE 04/01/2013 Fav/CS GO 04/16/2013 Favorable RC 04/22/2013 Favorable	Favorable Yeas 14 Nays 0
6	SB 1680 Altman (Identical H 725)	Public Records and Public Meetings/State Child Abuse Death Review Committee or Local Committee; Eliminating requirements that the closed portion of a meeting of the State Child Abuse Death Review Committee or a local committee at which specified identifying information is discussed be recorded, that no portion of such closed meeting be off the record, and that the recording be maintained by the state committee or a local committee, etc. CF 04/08/2013 Favorable GO 04/16/2013 Favorable RC 04/22/2013 Favorable	Favorable Yeas 11 Nays 3

COMMITTEE MEETING EXPANDED AGENDA

Rules

Monday, April 22, 2013, 2:00 —6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	CS/SB 626 Education / Bullard (Compare CS/CS/H 609)	Bullying in the Public School System; Citing this act as the "Imagine Shetteria Elliot Act"; prohibiting cyberbullying in schools and during school-related activities; expanding the circumstances under which bullying or harassment of any student or employee of a public K-12 institution is prohibited; requiring each school district to incorporate a prohibition on cyberbullying into its policy on bullying and harassment; requiring that such policy mandate that computers without web-filtering software or computers with web-filtering software disabled be used when investigating complaints of cyberbullying, etc. ED 03/12/2013 Fav/CS JU 04/15/2013 Favorable RC 04/22/2013 Favorable	Favorable Yeas 15 Nays 0
8	CS/SB 262 Banking and Insurance / Smith (Similar CS/H 157, Compare CS/CS/H 635, CS/S 1046)	Delivery of Insurance Policies; Providing that an insurance policy may be delivered by electronic means; specifying the types of policies that can be delivered electronically; requiring that a paper copy of the policy be provided upon request, etc. BI 04/02/2013 Fav/CS CM 04/15/2013 Favorable RC 04/22/2013 Favorable	Favorable Yeas 15 Nays 0
9	CS/SB 304 Governmental Oversight and Accountability / Criminal Justice (Similar H 7079)	OGSR/Agency Employee/Victim of Domestic Violence or Sexual Violence; Amending provisions relating to an exemption from public record requirements for certain information submitted to an agency by an agency employee who is a victim of domestic violence or sexual violence; removing the scheduled repeal of the exemption, etc. GO 03/14/2013 Fav/CS RC 04/22/2013 Favorable	Favorable Yeas 15 Nays 0
10	CS/SB 836 Banking and Insurance / Simmons (Similar CS/CS/H 821, Compare CS/CS/H 823, Link CS/S 834)	Insurer Solvency; Providing additional calculations for determining whether an insurer has a company action level event; requiring an insurer's annual statement to include an actuarial opinion summary; protecting material supporting an insurer's annual actuarial opinion from subpoena, discovery, or admissibility in a civil action; revising the amount of outstanding voting securities of a domestic stock insurer or a controlling company that a person is prohibited from acquiring unless certain requirements have been met, etc. BI 04/02/2013 Fav/CS JU 04/15/2013 Favorable RC 04/22/2013 Fav/CS	Fav/CS Yeas 14 Nays 0

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Rules

Monday, April 22, 2013, 2:00 —6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	SB 924 Latvala (Similar H 581, Compare CS/CS/S 1016)	Dentists; Prohibiting a contract between a health insurer and a dentist from requiring the dentist to provide services at a fee set by the insurer under certain circumstances; prohibiting a contract between a prepaid limited health service organization and a dentist from requiring the dentist to provide services at a fee set by the organization under certain circumstances; prohibiting a contract between a health maintenance organization and a dentist from requiring the dentist to provide services at a fee set by the organization under certain circumstances, etc. HP 03/20/2013 Favorable BI 04/02/2013 Favorable AP 04/18/2013 Favorable RC 04/22/2013 Favorable	Favorable Yeas 15 Nays 0
12	CS/CS/SB 984 Governmental Oversight and Accountability / Environmental Preservation and Conservation / Richter (Similar CS/CS/H 1085, Compare CS/CS/CS/H 1083, Link CS/CS/S 958)	Public Records/Natural Gas Storage Facility Permit; Creating an exemption from public records requirements for certain information provided in an application for a natural gas storage facility permit to inject and recover gas into and from a natural gas storage reservoir; providing exceptions to the exemption; providing for future review and repeal of the public records exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. EP 04/09/2013 Fav/CS GO 04/16/2013 Fav/CS RC 04/22/2013 Favorable	Favorable Yeas 13 Nays 0
13	SB 1412 Richter (Similar H 7015)	Expert Testimony; Providing that a witness qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion as to the facts at issue in a case under certain circumstances; requiring the courts of this state to interpret and apply the principles of expert testimony in conformity with specified United States Supreme Court decisions; subjecting pure opinion testimony to such requirements, etc. JU 04/08/2013 Not Considered JU 04/15/2013 Favorable RC 04/22/2013 Fav/CS	Fav/CS Yeas 13 Nays 2

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
14	CS/CS/SB 1384 Health Policy / Judiciary / Galvano (Compare H 869)	Nursing Home Litigation; Providing that a claim for punitive damages may not be brought unless there is a showing of admissible evidence proffered by the parties which provides a reasonable basis for recovery of punitive damages when certain criteria are applied; requiring the trier of fact to find by clear and convincing evidence that a specific person or corporate defendant actively and knowingly participated in intentional misconduct or engaged in conduct that constituted gross negligence and contributed to the loss, damages, or injury suffered by the claimant before punitive damages may be awarded, etc. JU 04/01/2013 Fav/CS HP 04/09/2013 Not Considered HP 04/16/2013 Fav/CS RC 04/22/2013 Favorable	Favorable Yeas 12 Nays 3
15	SB 1864 Environmental Preservation and Conservation (Identical H 7157)	Ratification of Rules Implementing Total Maximum Daily Loads for Impaired Water Bodies; Ratifying specified rules of the Department of Environmental Protection for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule meeting any of the specified thresholds for likely adverse impact or increase in regulatory costs, etc. RC 04/22/2013 Favorable	Favorable Yeas 15 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 378

INTRODUCER: Banking and Insurance Committee and Senator Bean

SUBJECT: Manufactured and Mobile Homes

DATE: April 19, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	Fav/CS
2.	Oxamendi	Imhof	RI	Favorable
3.	Davis	Hansen	AP	Favorable
4.	Matiyow	Phelps	RC	Favorable
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 378 requires Citizens Property Insurance Corporation to issue policies for manufactured or mobile homes and attached structures, including screened enclosures, carports, and covered patios. The bill also specifies the manner in which funds from the Florida Mobile Home Relocation Trust Fund are to be disbursed to the Florida Mobile Home Relocation Corporation.

The bill has no fiscal impact on state or local funds. The bill would take effect upon becoming law.

This bill substantially amends 627.351 and 723.06115, Florida Statutes.

II. Present Situation:

Citizens Property Insurance Corporation (Citizens)

Citizens is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the

voluntary admitted market.¹ Citizens is not a private insurance company.² Citizens was statutorily created in 2002 when the Florida Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA). Citizens operates in accordance with s. 627.351(6), F.S. It is governed by an eight member Board of Governors³ (board) that administers its Plan of Operations, which is reviewed and approved by the Financial Services Commission. The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer (CFO) each appoints two members to the board. Citizens is subject to regulation by the Florida Office of Insurance Regulation.

Citizens Accounts

Citizens offers three types of property and casualty insurance in three separate accounts. Each account is a separate statutory account with separate calculations of surplus and deficits.⁴ Assets may not be commingled or used to fund losses in another account.⁵ The three Citizens accounts are:

Personal Lines Account (PLA): Statewide account offering multiperil policies covering homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and similar policies.

- Policies in Force: 838,143
- In Force Premium: \$1,379,410,864
- Total Exposure: \$175,864,284,312

Coastal Account (Coastal): Coastal area account offering personal residential wind-only policies, commercial residential wind-only policies and commercial nonresidential wind-only policies issued in limited eligible coastal areas. In addition, in August of 2007, Citizens began offering personal and commercial residential multiperil policies in the Coastal account.

- Policies in Force: 438,642
- In Force Premium: \$1,144,655,922
- Total Exposure: \$191,101,715,209

Commercial Lines Account (CLA): Statewide account offering multiperil policies covering commercial residential-condominium associations, apartment buildings and homeowners associations; and commercial non-residential policies.

- Policies in Force: 8,016
- In Force Premium: \$200,296,331

¹ Admitted market means insurance companies licensed to transact insurance in Florida.

² Section 627.351(6)(a)1., F.S. Citizens is also subject to regulation by the Office of Insurance Regulation.

³ The Governor, the Chief Financial Officer, the President of the Senate and the Speaker of the House of Representatives appoint two members each.

⁴ The Personal Lines Account and the Commercial Lines account are combined for credit and Florida Hurricane Catastrophe Fund coverage.

⁵ Section 627.351(6)(b)2.b., F.S.

- Total Exposure: \$38,748,152,744

Total All Accounts Combined:⁶

- Policies in Force: 1,284,801
- In Force Premium: \$2,724,363,117
- Total Exposure: \$405,714,152,265

Citizens Financial Resources

According to Citizens, its financial resources include insurance premiums, investment income, operating surplus from prior years, Florida Hurricane Catastrophe Fund (FHCF) reimbursements, private reinsurance, policyholder surcharges, and regular and emergency assessments. As of December 13, 2013, Citizens will have an accumulated surplus of approximately \$6.34 billion. For the 2013 hurricane season Citizens will have purchased \$1.75 billion in private reinsurance coverage along with the \$5.73 billion in mandatory layer reinsurance from the FHCF. For the 2013 hurricane season Citizens' probable maximum loss (PML) from a 1-in-100 year event is \$20.42 billion.

If a deficit occurs in a Citizens account, Citizens is authorized to levy assessments on its policyholders and on each line of property and casualty line of business other than workers' compensation insurance and medical malpractice insurance.⁷ The assessments Citizens may impose and their sequence is as follows:

Citizens Surcharge: Requires up to 15 percent of premium surcharge for 12 months on all Citizens policies, collected upon issuance or renewal. This 15 percent assessment can be levied on each of the three Citizens accounts with a maximum assessment of 45 percent of premium.

Regular Assessment: If the Citizens surcharge is insufficient to cure the deficit for the coastal account, Citizens can require an assessment against all other insurers (except medical malpractice and workers comp). The assessment may be recouped from policyholders through a rate filing process of up to 2 percent of premium or 2 percent of the deficit, whichever is greater. This assessment is not levied against Citizens' policyholders.

Emergency Assessment: Requires any remaining deficit for either of Citizens' three accounts to be funded by multi-year emergency assessments on all insurance policyholders (except medical malpractice and workers comp), but including Citizens' policyholders. This assessment is levied up to 10 percent of premium or 10 percent of the deficit per account, whichever is greater. The maximum emergency assessment that can be levied against Florida's varicose insurance policyholders is 30 percent per policy.

⁶ Citizens weekly report as of March 1, 2013 on file with Senate Committee on Banking and Insurance.

⁷ See 267.736(6)(b)3.f., F.S., Accident and health insurance and policies written under the National Flood Insurance Program or the Federal Crop Insurance Program are not assessable types of property and casualty insurance. Surplus lines insurers are not assessable, but their policyholders are.

Citizens Rates

Citizens' rates for coverage are required to be actuarially sound and are subject to the rate standards for property and casualty insurance in s. 627.062, F.S., except as otherwise provided.⁸ From 2007 until 2010, Citizens rates were frozen by statute⁹ at the level that had been established in 2006. In 2010, the Legislature established a "glide path" to impose annual rate increases up to a level that is actuarially sound.¹⁰ Citizens must implement an annual rate increase which does not exceed 10 percent above the previous year for any individual policyholder, adjusted for coverage changes and surcharges. The implementation of this increase ceases when Citizens has achieved actuarially sound rates. Section 215.555(5)(b), F.S., provides, in addition to the overall glide path rate increase, that Citizens can increase its rates to recover the additional reimbursement premium that it incurs as a result of the annual cash build-up factor added to the price of the mandatory layer of the FHCF coverage.

Mobile Home Coverage

Current law limits Citizen's coverage on mobile homes or manufactured homes built before 1994 to actual cash value of the dwelling rather than replacement costs of the dwelling.¹¹

Coverage B (Other Structures)

Effective February 1, 2012, Citizens ceased providing Coverage B for the following structures whether attached to the dwelling or not:

- Screened enclosures that are aluminum framed or not covered by the same or substantially the same materials as that of the primary dwelling.
- Carports that are aluminum or not covered by the same or substantially the same materials as that of the primary dwelling.
- Patios that have a roof covering not constructed of the same or substantially the same materials as that of the primary dwelling.
- Awnings.
- Structures with a roof or wall covering that are thatch, lattice, slats or a similar material.
- Slat houses, chickees, tiki huts, gazebos, cabanas, canopies, pergolas or similar structures constructed to be open to the weather.

However, Citizens subsequently reconsidered its policy and approved a limited buyback option to allow mobile home owners to purchase coverage for attached carports, screened enclosures, and covered patios up to a limit of \$10,000. The coverage is limited to actual cash value and subject to policy deductibles. The coverage does not apply to awnings, screens, aluminum fram enclosures, gazebos, and other similar structures.¹²

⁸ Section 627.351(6)(n)1., F.S.

⁹ Section 627.351(6)(n)4., F.S.

¹⁰ Ch. 2009-87; s.10, L.O.F.

¹¹ Section 627.351(6)(c)16., F.S.

¹² Citizens Property Insurance Corporation, *Citizens Reinstates Limited Coverages for Sinkhole, Mobile Homes, Builders*, Press Release Dated March 27, 2013. A copy of the press release is available at: <https://www.citizensfla.com/shared/press/articles/104/03.27.2013.pdf> (Last visited March 27, 2013).

Florida Mobile Home Relocation Corporation

Section 723.061(1)(d), F.S., provides that a mobile home owner and/or tenant can be evicted from his or her mobile home due to a change in the use of the land comprising the mobile home park. The park owner must give the affected mobile home owners and tenants at least 6 months' notice of the eviction due to the projected change in use, and of their need to secure other accommodations.¹³

In 2001, the Florida Mobile Home Relocation Corporation (corporation) was created to provide payments to mobile home owners who are required to move due to a change in the use of the land comprising their mobile home park, pursuant to s. 723.061(1)(d), F.S.¹⁴ The corporation is administered by a volunteer-based, six-member board.¹⁵ The board also employs or retains attorneys, accountants, and administrative personnel to perform its duties.¹⁶

If a mobile home owner is required to move due to a change in use of the land, the mobile home owner is entitled to payment from the corporation in the amount of actual moving expenses of relocating the mobile home to a new location within a 50-mile radius of the vacated park. Alternatively, the mobile homeowner is entitled to payment in the amount of \$3,000 for a single-section mobile home or \$6,000 for a multisection mobile home, whichever is less. Moving expenses include the cost of taking down, moving, and setting up the mobile home in a new location.¹⁷

The corporation receives funding from three sources:

- An annual one dollar surcharge on mobile home lots located in a mobile home park, collected by the Department of Business and Professional Regulation (department) pursuant to s. 723.007(2), F.S.;
- An annual one dollar surcharge on registration payments by mobile home owners collected by the Department of Highway Safety and Motor Vehicles; and
- Funds collected from mobile home park owners when the mobile home owner applies for payment of moving expenses or mobile home abandonment allowance.¹⁸

All funds are deposited into the Florida Mobile Home Relocation Trust Fund (Trust Fund), established by s. 723.06115, F.S. Chapter 723, F.S., does not specify how the funds are to be disbursed to the corporation. Instead, the transfer of funds is conducted pursuant to a Memorandum of Understanding entered into by the department and the corporation.

Currently, funds are disbursed to the corporation on a monthly basis, less any amounts withheld for the required 8 percent contribution to the general revenue fund. According to the department,

¹³ Section 723.061(1)(d)2., F.S.

¹⁴ See generally, ss. 723.0611, 723.0612 and 723.06116, F.S.

¹⁵ Department of Business and Professional Regulation, Internal Audit Report A-1112-BPR-032, page 2, dated October 4, 2012.

¹⁶ Id.

¹⁷ Section 723.0612(1), F.S.

¹⁸ Department of Business and Professional Regulation, Internal Audit Report A-1112-BPR-032, dated October 4, 2012.

during fiscal year 2011-2012, \$759,376.86 was deposited into the trust fund with \$698,945.71 of that amount transferred to the corporation.

The department's Office of Inspector General issued an audit of the Florida Mobile Home Relocation Program. The audit expressed concerns regarding the need for greater segregation of the duties for the two employees of the corporation so that no employee is in a position to perpetuate and conceal errors or fraud in the normal course of their duties. The report also noted the cash balances amassed in multiple non-interest bearing accounts during periods with few payout requests. The audit recommended:

- Amending the department's current Memorandum of Understanding with the corporation "to address the transfer of funds, submission of additional financial reporting, and periodic review of the Memorandum. Financial information should be reviewed and analyzed by Department staff to enhance detective controls to mitigate the risks associated with inadequate segregation of duties."
- That the department "consider policy and operational changes to better align the corporation's operations with current needs."¹⁹

Florida Qualified Public Depository (QPD)

The Florida Security for Public Deposits Act (act)²⁰ delineates the powers and duties of the CFO and the requirements that must be met by QPDs and public depositors.²¹ To provide protection of public deposits, each QPD is required to pledge collateral at a level commensurate with the amount of public deposits²² held and a measure of its financial stability, as determined by the CFO. The CFO may demand payment under a letter of credit or direct a custodian to deposit or transfer collateral and proceeds of securities not previously credited upon the occurrence of one or more triggering events as provided for in law.²³ The act provides that when the CFO determines that a QPD default or insolvency has occurred, the loss to public depositors is to be satisfied, insofar as possible, first through any applicable deposit insurance and then through demanding payment under letters of credit or the sale of collateral pledged or deposited by the defaulting QPD.²⁴ The CFO is to provide coverage of any remaining loss by use of amounts assessed and collected from the other QPDs.

¹⁹ *Id.*

²⁰ Chapter 280, F.S.

²¹ A public depositor is the official custodian of funds for a governmental unit who is responsible for handling public deposits.

²² A public deposit is defined as the moneys of the State or of any State university, county, school district, community college, special district, metropolitan governments, or municipality, including agencies, boards, bureaus, commissions, and institutions of any of the foregoing, or of any court, and includes the moneys of all county officers, including constitutional officers, that are placed on deposit in a bank, savings bank, or saving association and for which the bank, savings bank, or savings association is required to maintain reserves.

²³ *See* s. 280.041(6), F.S. Examples of triggering events include those instances in which the CFO determines that an immediate danger to the public health, safety, or welfare exists; the QPD defaults or becomes insolvent; the QPD fails to pay an administrative penalty; the QPD fails to meet financial condition standards; and the QPD pledges, deposits, or has issued insufficient or unacceptable collateral to meet required collateral within the required time.

²⁴ Section 280.08, F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 627.351(6)(c), F.S., to require that Citizens provide coverage for manufactured or mobile home dwellings for a minimum insured value of at least \$3,000. Such coverage must also include the following attached structures:

- Screened enclosures that are aluminum framed or screened enclosures that are not covered by the same or substantially the same materials as that of the primary dwelling.
- Carports that are aluminum or carports not covered by the same or substantially the same materials as that of the primary dwelling.
- Patios that have a roof covering constructed of materials that are not the same or substantially the same materials as that of the primary dwelling.

Section 2 amends s. 723.06115, F.S., to specify the manner in which funds from the Florida Mobile Home Relocation Trust Fund are to be disbursed by the department to the corporation. All funds transferred from the trust fund to the corporation must be transferred electronically and maintained in a qualified public depository (QPD) specified by the corporation.

The bill requires, before the beginning of each fiscal year, that the corporation submit its written annual operating budget, as approved by the corporation's board, for the fiscal year. The department is required to electronically transfer one-fourth of the operating budget to the corporation each quarter. The department must make the first one-fourth quarter transfer on the first business day of the fiscal year and make the remaining one-fourth quarter transfers before the second business day of the second, third, and fourth quarters. The corporation board may approve changes to the operational budget for a fiscal year by providing written notification of such changes to the department. The written notification must indicate the changes to the operational budget and the conditions that were unforeseen at the time the corporation developed the operational budget and why the changes are essential in order to continue operation of the corporation.

The bill requires the corporation to periodically submit requests to the department for the electronic transfer the funds needed to make payments to the mobile home owners whose applications have been approved under the corporation's relocation program. The corporation's requests for the additional funds must include documentation indicating the amount of funds needed, the name and location of the mobile home park, the number of approved applications for moving expenses or abandonment allowance, and summary information specifying the number and type, single-section or multisection, of homes moved or abandoned. The department must process the requests that include the required documentation, subject to the availability of sufficient funds, within the trust fund within 5 business days after receipt of the request.

Additionally, the bill allows the department to inspect the corporation's records upon written notice of five business days.

Finally, the bill specifies that other than the requirements set forth in the section, neither the corporation nor the department is required to take any other action as a prerequisite to accomplish the provisions of this section.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Manufactured or mobile home owners will be able to purchase Citizens Property Insurance coverage for their screen enclosures, carports and patios.

The changes made by the bill that require Citizens to offer coverage for mobile and manufacture homes and certain attached structures may increase the number of policies in Citizens. Increasing the number of policies also increases Citizens' exposure and the probability of increased assessments on Citizens' and non-Citizens' policyholders should a catastrophic event occur.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Banking and Insurance on March 14, 2013:

The committee substitute (CS) requires Citizens to provide coverage for manufactured or mobile home dwellings for a minimum insured value of at least \$3,000. Such coverage must also include the following attached structures:

- Screened enclosures that are aluminum framed or screened enclosures that are not covered by the same or substantially the same materials as that of the primary dwelling.
- Carports that are aluminum or carports not covered by the same or substantially the same materials as that of the primary dwelling.
- Patios that have a roof covering constructed of materials that are not the same or substantially the same materials as that of the primary dwelling.

The CS also requires that the board of the Florida Mobile Home Relocation Corporation must approve the corporation's operational budget before submitting to the department. The corporation must provide to the department certain documentation before monies can be transferred from the trust fund for relocation payments. The CS provides that all funds transferred from the trust fund are to be transferred electronically and placed in a qualified public depository. Additionally, the CS allows the department to inspect the corporation's records at anytime with 5 business days notice.

- B. **Amendments:**

None.

By the Committee on Banking and Insurance; and Senator Bean

597-02425-13

2013378c1

1 A bill to be entitled
 2 An act relating to manufactured and mobile homes;
 3 amending s. 627.351, F.S.; requiring the Citizens
 4 Property Insurance Corporation to provide coverage for
 5 mobile homes and related structures; amending s.
 6 723.06115, F.S.; specifying the procedure for
 7 requesting and obtaining funds from the Florida Mobile
 8 Home Relocation Trust Fund to pay for the operational
 9 costs of the Florida Mobile Home Relocation
 10 Corporation and the relocation costs of mobile home
 11 owners; providing an effective date.
 12
 13 Be It Enacted by the Legislature of the State of Florida:
 14
 15 Section 1. Paragraph (c) of subsection (6) of section
 16 627.351, Florida Statutes, is amended to read:
 17 627.351 Insurance risk apportionment plans.—
 18 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—
 19 (c) The corporation's plan of operation:
 20 1. Must provide for adoption of residential property and
 21 casualty insurance policy forms and commercial residential and
 22 nonresidential property insurance forms, which must be approved
 23 by the office before use. The corporation shall adopt the
 24 following policy forms:
 25 a. Standard personal lines policy forms that are
 26 comprehensive multiperil policies providing full coverage of a
 27 residential property equivalent to the coverage provided in the
 28 private insurance market under an HO-3, HO-4, or HO-6 policy.
 29 b. Basic personal lines policy forms that are policies

Page 1 of 22

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597-02425-13

2013378c1

30 similar to an HO-8 policy or a dwelling fire policy that provide
 31 coverage meeting the requirements of the secondary mortgage
 32 market, but which is more limited than the coverage under a
 33 standard policy.
 34 c. Commercial lines residential and nonresidential policy
 35 forms that are generally similar to the basic perils of full
 36 coverage obtainable for commercial residential structures and
 37 commercial nonresidential structures in the admitted voluntary
 38 market.
 39 d. Personal lines and commercial lines residential property
 40 insurance forms that cover the peril of wind only. The forms are
 41 applicable only to residential properties located in areas
 42 eligible for coverage under the coastal account referred to in
 43 sub-subparagraph (b)2.a.
 44 e. Commercial lines nonresidential property insurance forms
 45 that cover the peril of wind only. The forms are applicable only
 46 to nonresidential properties located in areas eligible for
 47 coverage under the coastal account referred to in sub-
 48 subparagraph (b)2.a.
 49 f. The corporation may adopt variations of the policy forms
 50 listed in sub-subparagraphs a.-e. which contain more restrictive
 51 coverage.
 52 g. Effective January 1, 2013, the corporation shall offer a
 53 basic personal lines policy similar to an HO-8 policy with
 54 dwelling repair based on common construction materials and
 55 methods.
 56 2. Must provide that the corporation adopt a program in
 57 which the corporation and authorized insurers enter into quota
 58 share primary insurance agreements for hurricane coverage, as

Page 2 of 22

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597-02425-13

2013378c1

59 defined in s. 627.4025(2)(a), for eligible risks, and adopt
60 property insurance forms for eligible risks which cover the
61 peril of wind only.

62 a. As used in this subsection, the term:

63 (I) "Quota share primary insurance" means an arrangement in
64 which the primary hurricane coverage of an eligible risk is
65 provided in specified percentages by the corporation and an
66 authorized insurer. The corporation and authorized insurer are
67 each solely responsible for a specified percentage of hurricane
68 coverage of an eligible risk as set forth in a quota share
69 primary insurance agreement between the corporation and an
70 authorized insurer and the insurance contract. The
71 responsibility of the corporation or authorized insurer to pay
72 its specified percentage of hurricane losses of an eligible
73 risk, as set forth in the agreement, may not be altered by the
74 inability of the other party to pay its specified percentage of
75 losses. Eligible risks that are provided hurricane coverage
76 through a quota share primary insurance arrangement must be
77 provided policy forms that set forth the obligations of the
78 corporation and authorized insurer under the arrangement,
79 clearly specify the percentages of quota share primary insurance
80 provided by the corporation and authorized insurer, and
81 conspicuously and clearly state that the authorized insurer and
82 the corporation may not be held responsible beyond their
83 specified percentage of coverage of hurricane losses.

84 (II) "Eligible risks" means personal lines residential and
85 commercial lines residential risks that meet the underwriting
86 criteria of the corporation and are located in areas that were
87 eligible for coverage by the Florida Windstorm Underwriting

597-02425-13

2013378c1

88 Association on January 1, 2002.

89 b. The corporation may enter into quota share primary
90 insurance agreements with authorized insurers at corporation
91 coverage levels of 90 percent and 50 percent.

92 c. If the corporation determines that additional coverage
93 levels are necessary to maximize participation in quota share
94 primary insurance agreements by authorized insurers, the
95 corporation may establish additional coverage levels. However,
96 the corporation's quota share primary insurance coverage level
97 may not exceed 90 percent.

98 d. Any quota share primary insurance agreement entered into
99 between an authorized insurer and the corporation must provide
100 for a uniform specified percentage of coverage of hurricane
101 losses, by county or territory as set forth by the corporation
102 board, for all eligible risks of the authorized insurer covered
103 under the agreement.

104 e. Any quota share primary insurance agreement entered into
105 between an authorized insurer and the corporation is subject to
106 review and approval by the office. However, such agreement shall
107 be authorized only as to insurance contracts entered into
108 between an authorized insurer and an insured who is already
109 insured by the corporation for wind coverage.

110 f. For all eligible risks covered under quota share primary
111 insurance agreements, the exposure and coverage levels for both
112 the corporation and authorized insurers shall be reported by the
113 corporation to the Florida Hurricane Catastrophe Fund. For all
114 policies of eligible risks covered under such agreements, the
115 corporation and the authorized insurer must maintain complete
116 and accurate records for the purpose of exposure and loss

597-02425-13

2013378c1

117 reimbursement audits as required by fund rules. The corporation
 118 and the authorized insurer shall each maintain duplicate copies
 119 of policy declaration pages and supporting claims documents.

120 g. The corporation board shall establish in its plan of
 121 operation standards for quota share agreements which ensure that
 122 there is no discriminatory application among insurers as to the
 123 terms of the agreements, pricing of the agreements, incentive
 124 provisions if any, and consideration paid for servicing policies
 125 or adjusting claims.

126 h. The quota share primary insurance agreement between the
 127 corporation and an authorized insurer must set forth the
 128 specific terms under which coverage is provided, including, but
 129 not limited to, the sale and servicing of policies issued under
 130 the agreement by the insurance agent of the authorized insurer
 131 producing the business, the reporting of information concerning
 132 eligible risks, the payment of premium to the corporation, and
 133 arrangements for the adjustment and payment of hurricane claims
 134 incurred on eligible risks by the claims adjuster and personnel
 135 of the authorized insurer. Entering into a quota sharing
 136 insurance agreement between the corporation and an authorized
 137 insurer is voluntary and at the discretion of the authorized
 138 insurer.

139 3.a. May provide that the corporation may employ or
 140 otherwise contract with individuals or other entities to provide
 141 administrative or professional services that may be appropriate
 142 to effectuate the plan. The corporation may borrow funds by
 143 issuing bonds or by incurring other indebtedness, and shall have
 144 other powers reasonably necessary to effectuate the requirements
 145 of this subsection, including, without limitation, the power to

597-02425-13

2013378c1

146 issue bonds and incur other indebtedness in order to refinance
 147 outstanding bonds or other indebtedness. The corporation may
 148 seek judicial validation of its bonds or other indebtedness
 149 under chapter 75. The corporation may issue bonds or incur other
 150 indebtedness, or have bonds issued on its behalf by a unit of
 151 local government pursuant to subparagraph (q)2. in the absence
 152 of a hurricane or other weather-related event, upon a
 153 determination by the corporation, subject to approval by the
 154 office, that such action would enable it to efficiently meet the
 155 financial obligations of the corporation and that such
 156 financings are reasonably necessary to effectuate the
 157 requirements of this subsection. The corporation may take all
 158 actions needed to facilitate tax-free status for such bonds or
 159 indebtedness, including formation of trusts or other affiliated
 160 entities. The corporation may pledge assessments, projected
 161 recoveries from the Florida Hurricane Catastrophe Fund, other
 162 reinsurance recoverables, policyholder surcharges and other
 163 surcharges, and other funds available to the corporation as
 164 security for bonds or other indebtedness. In recognition of s.
 165 10, Art. I of the State Constitution, prohibiting the impairment
 166 of obligations of contracts, it is the intent of the Legislature
 167 that no action be taken whose purpose is to impair any bond
 168 indenture or financing agreement or any revenue source committed
 169 by contract to such bond or other indebtedness.

170 b. To ensure that the corporation is operating in an
 171 efficient and economic manner while providing quality service to
 172 policyholders, applicants, and agents, the board shall
 173 commission an independent third-party consultant having
 174 expertise in insurance company management or insurance company

597-02425-13 2013378c1

175 management consulting to prepare a report and make
 176 recommendations on the relative costs and benefits of
 177 outsourcing various policy issuance and service functions to
 178 private servicing carriers or entities performing similar
 179 functions in the private market for a fee, rather than
 180 performing such functions in-house. In making such
 181 recommendations, the consultant shall consider how other
 182 residual markets, both in this state and around the country,
 183 outsource appropriate functions or use servicing carriers to
 184 better match expenses with revenues that fluctuate based on a
 185 widely varying policy count. The report must be completed by
 186 July 1, 2012. Upon receiving the report, the board shall develop
 187 a plan to implement the report and submit the plan for review,
 188 modification, and approval to the Financial Services Commission.
 189 Upon the commission's approval of the plan, the board shall
 190 begin implementing the plan by January 1, 2013.

191 4. Must require that the corporation operate subject to the
 192 supervision and approval of a board of governors consisting of
 193 eight individuals who are residents of this state, from
 194 different geographical areas of this state.

195 a. The Governor, the Chief Financial Officer, the President
 196 of the Senate, and the Speaker of the House of Representatives
 197 shall each appoint two members of the board. At least one of the
 198 two members appointed by each appointing officer must have
 199 demonstrated expertise in insurance and ~~is~~ deemed to be within
 200 the scope of the exemption provided in s. 112.313(7)(b). The
 201 Chief Financial Officer shall designate one of the appointees as
 202 chair. All board members serve at the pleasure of the appointing
 203 officer. All members of the board are subject to removal at will

597-02425-13 2013378c1

204 by the officers who appointed them. All board members, including
 205 the chair, must be appointed to serve for 3-year terms beginning
 206 annually on a date designated by the plan. However, for the
 207 first term beginning on or after July 1, 2009, each appointing
 208 officer shall appoint one member of the board for a 2-year term
 209 and one member for a 3-year term. A board vacancy shall be
 210 filled for the unexpired term by the appointing officer. The
 211 Chief Financial Officer shall appoint a technical advisory group
 212 to provide information and advice to the board in connection
 213 with the board's duties under this subsection. The executive
 214 director and senior managers of the corporation shall be engaged
 215 by the board and serve at the pleasure of the board. Any
 216 executive director appointed on or after July 1, 2006, is
 217 subject to confirmation by the Senate. The executive director is
 218 responsible for employing other staff as the corporation may
 219 require, subject to review and concurrence by the board.

220 b. The board shall create a Market Accountability Advisory
 221 Committee to assist the corporation in developing awareness of
 222 its rates and its customer and agent service levels in
 223 relationship to the voluntary market insurers writing similar
 224 coverage.

225 (I) The members of the advisory committee consist of the
 226 following 11 persons, one of whom must be elected chair by the
 227 members of the committee: four representatives, one appointed by
 228 the Florida Association of Insurance Agents, one by the Florida
 229 Association of Insurance and Financial Advisors, one by the
 230 Professional Insurance Agents of Florida, and one by the Latin
 231 American Association of Insurance Agencies; three
 232 representatives appointed by the insurers with the three highest

597-02425-13 2013378c1

233 voluntary market share of residential property insurance
 234 business in the state; one representative from the Office of
 235 Insurance Regulation; one consumer appointed by the board who is
 236 insured by the corporation at the time of appointment to the
 237 committee; one representative appointed by the Florida
 238 Association of Realtors; and one representative appointed by the
 239 Florida Bankers Association. All members shall be appointed to
 240 3-year terms and may serve for consecutive terms.

241 (II) The committee shall report to the corporation at each
 242 board meeting on insurance market issues which may include rates
 243 and rate competition with the voluntary market; service,
 244 including policy issuance, claims processing, and general
 245 responsiveness to policyholders, applicants, and agents; and
 246 matters relating to depopulation.

247 5. Must provide a procedure for determining the eligibility
 248 of a risk for coverage, as follows:

249 a. Subject to s. 627.3517, with respect to personal lines
 250 residential risks, if the risk is offered coverage from an
 251 authorized insurer at the insurer's approved rate under a
 252 standard policy including wind coverage or, if consistent with
 253 the insurer's underwriting rules as filed with the office, a
 254 basic policy including wind coverage, for a new application to
 255 the corporation for coverage, the risk is not eligible for any
 256 policy issued by the corporation unless the premium for coverage
 257 from the authorized insurer is more than 15 percent greater than
 258 the premium for comparable coverage from the corporation. If the
 259 risk is not able to obtain such offer, the risk is eligible for
 260 a standard policy including wind coverage or a basic policy
 261 including wind coverage issued by the corporation; however, if

597-02425-13 2013378c1

262 the risk could not be insured under a standard policy including
 263 wind coverage regardless of market conditions, the risk is
 264 eligible for a basic policy including wind coverage unless
 265 rejected under subparagraph 8. However, a policyholder of the
 266 corporation or a policyholder removed from the corporation
 267 through an assumption agreement until the end of the assumption
 268 period remains eligible for coverage from the corporation
 269 regardless of any offer of coverage from an authorized insurer
 270 or surplus lines insurer. The corporation shall determine the
 271 type of policy to be provided on the basis of objective
 272 standards specified in the underwriting manual and based on
 273 generally accepted underwriting practices.

274 (I) If the risk accepts an offer of coverage through the
 275 market assistance plan or through a mechanism established by the
 276 corporation before a policy is issued to the risk by the
 277 corporation or during the first 30 days of coverage by the
 278 corporation, and the producing agent who submitted the
 279 application to the plan or to the corporation is not currently
 280 appointed by the insurer, the insurer shall:

281 (A) Pay to the producing agent of record of the policy for
 282 the first year, an amount that is the greater of the insurer's
 283 usual and customary commission for the type of policy written or
 284 a fee equal to the usual and customary commission of the
 285 corporation; or

286 (B) Offer to allow the producing agent of record of the
 287 policy to continue servicing the policy for at least 1 year and
 288 offer to pay the agent the greater of the insurer's or the
 289 corporation's usual and customary commission for the type of
 290 policy written.

597-02425-13

2013378c1

291
 292 If the producing agent is unwilling or unable to accept
 293 appointment, the new insurer shall pay the agent in accordance
 294 with sub-sub-sub-subparagraph (A).

295 (II) If the corporation enters into a contractual agreement
 296 for a take-out plan, the producing agent of record of the
 297 corporation policy is entitled to retain any unearned commission
 298 on the policy, and the insurer shall:

299 (A) Pay to the producing agent of record, for the first
 300 year, an amount that is the greater of the insurer's usual and
 301 customary commission for the type of policy written or a fee
 302 equal to the usual and customary commission of the corporation;
 303 or

304 (B) Offer to allow the producing agent of record to
 305 continue servicing the policy for at least 1 year and offer to
 306 pay the agent the greater of the insurer's or the corporation's
 307 usual and customary commission for the type of policy written.
 308

309 If the producing agent is unwilling or unable to accept
 310 appointment, the new insurer shall pay the agent in accordance
 311 with sub-sub-sub-subparagraph (A).

312 b. With respect to commercial lines residential risks, for
 313 a new application to the corporation for coverage, if the risk
 314 is offered coverage under a policy including wind coverage from
 315 an authorized insurer at its approved rate, the risk is not
 316 eligible for a policy issued by the corporation unless the
 317 premium for coverage from the authorized insurer is more than 15
 318 percent greater than the premium for comparable coverage from
 319 the corporation. If the risk is not able to obtain any such

Page 11 of 22

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597-02425-13

2013378c1

320 offer, the risk is eligible for a policy including wind coverage
 321 issued by the corporation. However, a policyholder of the
 322 corporation or a policyholder removed from the corporation
 323 through an assumption agreement until the end of the assumption
 324 period remains eligible for coverage from the corporation
 325 regardless of an offer of coverage from an authorized insurer or
 326 surplus lines insurer.

327 (I) If the risk accepts an offer of coverage through the
 328 market assistance plan or through a mechanism established by the
 329 corporation before a policy is issued to the risk by the
 330 corporation or during the first 30 days of coverage by the
 331 corporation, and the producing agent who submitted the
 332 application to the plan or the corporation is not currently
 333 appointed by the insurer, the insurer shall:

334 (A) Pay to the producing agent of record of the policy, for
 335 the first year, an amount that is the greater of the insurer's
 336 usual and customary commission for the type of policy written or
 337 a fee equal to the usual and customary commission of the
 338 corporation; or

339 (B) Offer to allow the producing agent of record of the
 340 policy to continue servicing the policy for at least 1 year and
 341 offer to pay the agent the greater of the insurer's or the
 342 corporation's usual and customary commission for the type of
 343 policy written.
 344

345 If the producing agent is unwilling or unable to accept
 346 appointment, the new insurer shall pay the agent in accordance
 347 with sub-sub-sub-subparagraph (A).

348 (II) If the corporation enters into a contractual agreement

Page 12 of 22

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597-02425-13 2013378c1

349 for a take-out plan, the producing agent of record of the
 350 corporation policy is entitled to retain any unearned commission
 351 on the policy, and the insurer shall:

352 (A) Pay to the producing agent of record, for the first
 353 year, an amount that is the greater of the insurer's usual and
 354 customary commission for the type of policy written or a fee
 355 equal to the usual and customary commission of the corporation;
 356 or

357 (B) Offer to allow the producing agent of record to
 358 continue servicing the policy for at least 1 year and offer to
 359 pay the agent the greater of the insurer's or the corporation's
 360 usual and customary commission for the type of policy written.
 361

362 If the producing agent is unwilling or unable to accept
 363 appointment, the new insurer shall pay the agent in accordance
 364 with sub-sub-sub-subparagraph (A).

365 c. For purposes of determining comparable coverage under
 366 sub-subparagraphs a. and b., the comparison must be based on
 367 those forms and coverages that are reasonably comparable. The
 368 corporation may rely on a determination of comparable coverage
 369 and premium made by the producing agent who submits the
 370 application to the corporation, made in the agent's capacity as
 371 the corporation's agent. A comparison may be made solely of the
 372 premium with respect to the main building or structure only on
 373 the following basis: the same coverage A or other building
 374 limits; the same percentage hurricane deductible that applies on
 375 an annual basis or that applies to each hurricane for commercial
 376 residential property; the same percentage of ordinance and law
 377 coverage, if the same limit is offered by both the corporation

597-02425-13 2013378c1

378 and the authorized insurer; the same mitigation credits, to the
 379 extent the same types of credits are offered both by the
 380 corporation and the authorized insurer; the same method for loss
 381 payment, such as replacement cost or actual cash value, if the
 382 same method is offered both by the corporation and the
 383 authorized insurer in accordance with underwriting rules; and
 384 any other form or coverage that is reasonably comparable as
 385 determined by the board. If an application is submitted to the
 386 corporation for wind-only coverage in the coastal account, the
 387 premium for the corporation's wind-only policy plus the premium
 388 for the ex-wind policy that is offered by an authorized insurer
 389 to the applicant must be compared to the premium for multiperil
 390 coverage offered by an authorized insurer, subject to the
 391 standards for comparison specified in this subparagraph. If the
 392 corporation or the applicant requests from the authorized
 393 insurer a breakdown of the premium of the offer by types of
 394 coverage so that a comparison may be made by the corporation or
 395 its agent and the authorized insurer refuses or is unable to
 396 provide such information, the corporation may treat the offer as
 397 not being an offer of coverage from an authorized insurer at the
 398 insurer's approved rate.

399 6. Must include rules for classifications of risks and
 400 rates.

401 7. Must provide that if premium and investment income for
 402 an account attributable to a particular calendar year are in
 403 excess of projected losses and expenses for the account
 404 attributable to that year, such excess shall be held in surplus
 405 in the account. Such surplus must be available to defray
 406 deficits in that account as to future years and used for that

597-02425-13 2013378c1

407 purpose before assessing assessable insurers and assessable
408 insureds as to any calendar year.

409 8. Must provide objective criteria and procedures to be
410 uniformly applied to all applicants in determining whether an
411 individual risk is so hazardous as to be uninsurable. In making
412 this determination and in establishing the criteria and
413 procedures, the following must be considered:

414 a. Whether the likelihood of a loss for the individual risk
415 is substantially higher than for other risks of the same class;
416 and

417 b. Whether the uncertainty associated with the individual
418 risk is such that an appropriate premium cannot be determined.

419

420 The acceptance or rejection of a risk by the corporation shall
421 be construed as the private placement of insurance, and the
422 provisions of chapter 120 do not apply.

423 9. Must provide that the corporation make its best efforts
424 to procure catastrophe reinsurance at reasonable rates, to cover
425 its projected 100-year probable maximum loss as determined by
426 the board of governors.

427 10. The policies issued by the corporation must provide
428 that if the corporation or the market assistance plan obtains an
429 offer from an authorized insurer to cover the risk at its
430 approved rates, the risk is no longer eligible for renewal
431 through the corporation, except as otherwise provided in this
432 subsection.

433 11. Corporation policies and applications must include a
434 notice that the corporation policy could, under this section, be
435 replaced with a policy issued by an authorized insurer which

597-02425-13 2013378c1

436 does not provide coverage identical to the coverage provided by
437 the corporation. The notice must also specify that acceptance of
438 corporation coverage creates a conclusive presumption that the
439 applicant or policyholder is aware of this potential.

440 12. May establish, subject to approval by the office,
441 different eligibility requirements and operational procedures
442 for any line or type of coverage for any specified county or
443 area if the board determines that such changes are justified due
444 to the voluntary market being sufficiently stable and
445 competitive in such area or for such line or type of coverage
446 and that consumers who, in good faith, are unable to obtain
447 insurance through the voluntary market through ordinary methods
448 continue to have access to coverage from the corporation. If
449 coverage is sought in connection with a real property transfer,
450 the requirements and procedures may not provide an effective
451 date of coverage later than the date of the closing of the
452 transfer as established by the transferor, the transferee, and,
453 if applicable, the lender.

454 13. Must provide that, with respect to the coastal account,
455 any assessable insurer with a surplus as to policyholders of \$25
456 million or less writing 25 percent or more of its total
457 countrywide property insurance premiums in this state may
458 petition the office, within the first 90 days of each calendar
459 year, to qualify as a limited apportionment company. A regular
460 assessment levied by the corporation on a limited apportionment
461 company for a deficit incurred by the corporation for the
462 coastal account may be paid to the corporation on a monthly
463 basis as the assessments are collected by the limited
464 apportionment company from its insureds, but a limited

597-02425-13

2013378c1

465 apportionment company must begin collecting the regular
 466 assessments not later than 90 days after the regular assessments
 467 are levied by the corporation, and the regular assessments must
 468 be paid in full within 15 months after being levied by the
 469 corporation. A limited apportionment company shall collect from
 470 its policyholders any emergency assessment imposed under sub-
 471 subparagraph (b)3.d. The plan must provide that, if the office
 472 determines that any regular assessment will result in an
 473 impairment of the surplus of a limited apportionment company,
 474 the office may direct that all or part of such assessment be
 475 deferred as provided in subparagraph (q)4. However, an emergency
 476 assessment to be collected from policyholders under sub-
 477 subparagraph (b)3.d. may not be limited or deferred.

478 14. Must provide that the corporation appoint as its
 479 licensed agents only those agents who also hold an appointment
 480 as defined in s. 626.015(3) with an insurer who at the time of
 481 the agent's initial appointment by the corporation is authorized
 482 to write and is actually writing personal lines residential
 483 property coverage, commercial residential property coverage, or
 484 commercial nonresidential property coverage within the state.

485 15. Must provide a premium payment plan option to its
 486 policyholders which, at a minimum, allows for quarterly and
 487 semiannual payment of premiums. A monthly payment plan may, but
 488 is not required to, be offered.

489 16. Must limit coverage on mobile homes or manufactured
 490 homes built before 1994 to actual cash value of the dwelling
 491 rather than replacement costs of the dwelling.

492 17. Must provide coverage for manufactured or mobile home
 493 dwellings. Such coverage must also include the following

Page 17 of 22

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597-02425-13

2013378c1

494 attached structures:

495 a. Screened enclosures that are aluminum framed or screened
 496 enclosures that are not covered by the same or substantially the
 497 same materials as that of the primary dwelling;

498 b. Carports that are aluminum or carports not covered by
 499 the same or substantially the same materials as that of the
 500 primary dwelling; and

501 c. Patios that have a roof covering constructed of
 502 materials that are not the same or substantially the same
 503 materials as that of the primary dwelling.

504
 505 The corporation shall make available a policy for mobile homes
 506 or manufactured homes for a minimum insured value of at least
 507 \$3,000.

508 ~~18.17.~~ May provide such limits of coverage as the board
 509 determines, consistent with the requirements of this subsection.

510 ~~19.18.~~ May require commercial property to meet specified
 511 hurricane mitigation construction features as a condition of
 512 eligibility for coverage.

513 ~~20.19.~~ Must provide that new or renewal policies issued by
 514 the corporation on or after January 1, 2012, which cover
 515 sinkhole loss do not include coverage for any loss to
 516 appurtenant structures, driveways, sidewalks, decks, or patios
 517 that are directly or indirectly caused by sinkhole activity. The
 518 corporation shall exclude such coverage using a notice of
 519 coverage change, which may be included with the policy renewal,
 520 and not by issuance of a notice of nonrenewal of the excluded
 521 coverage upon renewal of the current policy.

522 ~~21.20.~~ As of January 1, 2012, must require that the agent

Page 18 of 22

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597-02425-13 2013378c1

523 obtain from an applicant for coverage from the corporation an
 524 acknowledgment signed by the applicant, which includes, at a
 525 minimum, the following statement:

526
 527 ACKNOWLEDGMENT OF POTENTIAL SURCHARGE
 528 AND ASSESSMENT LIABILITY:
 529

530 1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE
 531 CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A
 532 DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON,
 533 MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND
 534 PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE
 535 POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT
 536 OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA
 537 LEGISLATURE.

538 2. I ALSO UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY
 539 ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER
 540 INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE
 541 FLORIDA LEGISLATURE.

542 3. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE
 543 CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE
 544 STATE OF FLORIDA.

545 a. The corporation shall maintain, in electronic format or
 546 otherwise, a copy of the applicant's signed acknowledgment and
 547 provide a copy of the statement to the policyholder as part of
 548 the first renewal after the effective date of this subparagraph.

549 b. The signed acknowledgment form creates a conclusive
 550 presumption that the policyholder understood and accepted his or
 551 her potential surcharge and assessment liability as a

597-02425-13 2013378c1

552 policyholder of the corporation.

553 Section 2. Section 723.06115, Florida Statutes, is amended
 554 to read:

555 723.06115 Florida Mobile Home Relocation Trust Fund.—

556 (1) The Florida Mobile Home Relocation Trust Fund ~~There is~~
 557 established within the Department of Business and Professional
 558 Regulation. ~~The Florida Mobile Home Relocation trust fund, is to~~
 559 be used to fund ~~by the department for the purpose of funding~~ the
 560 administration and operations of the Florida Mobile Home
 561 Relocation Corporation. All interest earned from the investment
 562 or deposit of moneys in the trust fund shall be deposited in the
 563 trust fund. The trust fund shall be funded from ~~the moneys~~
 564 collected by the corporation ~~department under s. 723.06116~~ from
 565 mobile home park owners under s. 723.06116, ~~who change the use~~
 566 ~~of their mobile home parks~~; the surcharge collected by the
 567 department under s. 723.007(2), ~~+~~ the surcharge collected by the
 568 Department of Highway Safety and Motor Vehicles, ~~+~~ and from ~~by~~
 569 other appropriated funds.

570 (2) Moneys in the Florida Mobile Home Relocation Trust Fund
 571 may be expended only:

572 (a) To pay the administration costs of the Florida Mobile
 573 Home Relocation Corporation; and

574 (b) To carry out the purposes and objectives of the ~~Florida~~
 575 ~~Mobile Home Relocation~~ corporation by making payments to mobile
 576 home owners under the relocation program.

577 (3) The department shall distribute moneys in the Florida
 578 Mobile Home Relocation Trust Fund to the Florida Mobile Home
 579 Relocation Corporation in accordance with the following:

580 (a) Before the beginning of each fiscal year, the

597-02425-13

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581 corporation shall submit its annual operating budget, as
 582 approved by the corporation board, for the fiscal year and set
 583 forth that amount to the department in writing. One-fourth of
 584 the operating budget shall be transferred to the corporation
 585 each quarter. The department shall make the first one-fourth
 586 quarter transfer on the first business day of the fiscal year
 587 and make the remaining one-fourth quarter transfers before the
 588 second business day of the second, third, and fourth quarters.
 589 The corporation board may approve changes to the operational
 590 budget for a fiscal year by providing written notification of
 591 such changes to the department. The written notification must
 592 indicate the changes to the operational budget and the
 593 conditions that were unforeseen at the time the corporation
 594 developed the operational budget and why the changes are
 595 essential in order to continue operation of the corporation.
 596 (b) The corporation shall periodically submit requests to
 597 the department for the transfer of funds to the corporation
 598 needed to make payments to mobile home owners under the
 599 relocation program. Requests must include documentation
 600 indicating the amount of funds needed, the name and location of
 601 the mobile home park, the number of approved applications for
 602 moving expenses or abandonment allowance, and summary
 603 information specifying the number and type, single-section or
 604 multisection, of homes moved or abandoned. The department shall
 605 process requests that include such documentation, subject to the
 606 availability of sufficient funds within the trust fund within 5
 607 business days after receipt of the request. Transfer requests
 608 may be submitted electronically.
 609 (c) Funds transferred from the trust fund to the

Page 21 of 22

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

597-02425-13

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610 corporation shall be transferred electronically and shall be
 611 transferred to and maintained in a qualified public depository
 612 as defined in s. 280.02 which is specified by the corporation.
 613 (4) Other than the requirements specified under this
 614 section, neither the corporation nor the department are required
 615 to take any other action as a prerequisite to accomplishing the
 616 provisions of this section.
 617 (5) This section does not preclude department inspection of
 618 corporation records 5 business days after receipt of written
 619 notice.
 620 Section 3. This act shall take effect upon becoming a law.

Page 22 of 22

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4 12 2013

Meeting Date

Topic _____

Bill Number 378
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

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
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 594

INTRODUCER: Rules Committee, Banking and Insurance Committee and Senator Bean

SUBJECT: Nursing Homes and Related Health Care Facilities

DATE: April 22, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	Favorable
2.	Knudson	Burgess	BI	Fav/CS
3.	Looke	Phelps	RC	Fav/CS
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/CS/SB 594 amends various sections of the Florida Statutes to strike language requiring health care entities to be accredited by specific accreditation organizations and to replace that language with general provisions requiring health care entities to be accredited by an accrediting organization whose standards incorporate comparable licensure regulations required by this state and, where appropriate, is approved by the Centers for Medicare and Medicaid Services.

The bill also strikes an outdated provision requiring the AHCA to notify hospitals that it is creating a registry of primary and comprehensive stroke centers.

This bill substantially amends sections 154.11, 394.741, 395.3038, 397.403, 400.925, 400.9935, 402.7306, 408.05, 430.80, 440.13, 627.645, 627.668, 627.669, 627.736, 641.495, and 766.1015 of the Florida Statutes.

II. Present Situation:

Definition Change for “Accrediting Organizations”

In 2012 the Legislature enacted 2012-66, L.O.F., which substantially amended the definition of “accrediting organizations” in s. 395.002, F.S. Prior to the passage of 2012-66, L.O.F., the statutes defined “accrediting organizations” as the Joint Commission on Accreditation of Healthcare Organizations, the American Osteopathic Association, the Commission on Accreditation of Rehabilitation Facilities, and the Accreditation Association for Ambulatory Health Care, Inc. Currently, the definition includes any national accreditation organizations that are approved by the Centers for Medicare and Medicaid Services and whose standards incorporate comparable licensure regulations required by the state.

CARF International

What is now known as CARF International was founded in 1966 as the Commission on Accreditation of Rehabilitation Facilities when the National Association of Sheltered Workshops and Homebound Programs and the Association of Rehabilitation Centers agreed to pool their interests.¹ CARF International is a nonprofit accreditor of health and human services providers in multiple areas including aging services, behavioral health, and medical rehabilitation. The CARF family of organizations currently accredits close to 50,000 programs in countries across the globe.² Currently, the Florida Statutes still refer to CARF - the Commission on Accreditation of Rehabilitation Facilities or something similar.

The Joint Commission

The Joint Commission is a non-profit organization that accredits and certifies more than 20,000 health care organizations and programs in the United States.³ The Joint Commission was established in 1951 as the Joint Commission on Accreditation of Hospitals. In 1987, the organization changed its name to the Joint Commission on Accreditation of Healthcare Organizations in order to reflect an expanded scope of activities. In 2007, the Joint Commission on Accreditation of Healthcare Organizations shortened its name to the Joint Commission in order to refresh its brand identity.⁴ Currently, the Florida Statutes refer to the Joint Commission on Accreditation of Healthcare Organizations.

III. Effect of Proposed Changes:

CS/CS/SB 594 amends various sections of the Florida Statutes to strike language requiring health care entities to be accredited by specific accreditation organizations and to replace that language with general provisions requiring health care entities to be accredited by an accrediting organization whose standards incorporate comparable licensure regulations required by this state and, where appropriate, is approved by the Centers for Medicare and Medicaid Services.

¹ History of CARF International, found at: <http://www.carf.org/About/History/>, last visited on Mar. 4, 2013.

² CARF International, can be found at: <http://www.carf.org/About/WhoWeAre/>, last visited on Mar. 4, 2013.

³ About the Joint Commission, found at: http://www.jointcommission.org/about_us/about_the_joint_commission_main.aspx, last visited on Mar. 4, 2013.

⁴ The Joint Commission History, found at: http://www.jointcommission.org/assets/1/6/Joint_Commission_History.pdf, last visited on Mar. 4, 2013

The bill also strikes an outdated provision requiring the AHCA to notify hospitals that it is creating a registry of primary and comprehensive stroke centers.

The amended sections relate to:

- Section 154.11, F.S., the powers of the board of trustees;
- Section 394.741, F.S., accreditation requirements for providers of behavioral health care services;
- Section 395.3038, F.S., state-listed primary stroke centers and comprehensive stroke centers; notification of hospitals;
- Section 397.403, F.S., license application;
- Section 400.925, F.S., definitions;
- Section 400.9935, F.S., Clinic responsibilities;
- Section 402.7306, F.S., Administrative monitoring of child welfare providers, and administrative, licensure, and programmatic monitoring of mental health and substance abuse service providers;
- Section 408.05, F.S., Florida Center for Health Information and Policy Analysis;
- Section 430.80, F.S., implementation of a teaching nursing home pilot project;
- Section 440.13, F.S., medical services and supplies; penalty for violations; limitations;
- Section 627.645, F.S., denial of health insurance claims restricted;
- Section 627.668, F.S., optional coverage for mental and nervous disorders required; exception;
- Section 627.669, F.S., optional coverage required for substance abuse impaired persons; exception;
- Section 627.736, F.S., required personal injury protection benefits; exclusions; priority; claims;
- Section 641.495, F.S., requirements for issuance and maintenance of certificate; and
- Section 766.1015, F.S., civil immunity for members of or consultants to certain boards, committees, or other entities;

The bill provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Rules on April 22, 2013:

The CS removes provisions in the bill which exempt certain organizations from the definition of “clinic” under part X of ch. 400, F.S., and which allow certain health care providers to receive reimbursement under the Florida Motor Vehicle No-fault Law without obtaining licensure as a clinic.

The CS adds provisions that amend various sections of the Florida Statutes to strike language requiring health care entities to be accredited by specific accreditation organizations and to replace that language with general provisions requiring health care entities to be accredited by an accrediting organization whose standards incorporate comparable licensure regulations required by this state and, where appropriate, is approved by the Centers for Medicare and Medicaid Services.

The CS also makes technical and clean up changes such as striking outdated language requiring the AHCA to notify hospitals that it is creating a registry of primary and comprehensive stroke centers.

CS by Banking and Insurance on April 16, 2013:

The CS exempts from clinic licensure pediatric cardiology, perinatology, or anesthesia clinical facilities that are a publicly traded corporation or that are wholly owned, directly or indirectly, by a publicly traded corporation. The CS also revises the exemption for entities owned by a corporation with \$250 million or more in total annual sales of health

care services provided by licensed health care practitioners by conditioning the exemption on whether one of the persons responsible for the operation of the entity is a Florida-licensed health care practitioner who supervises its business activities. Under current law, the exemption is conditioned on whether at least one owner is a Florida Licensed health care practitioner who supervises the business activities of the entity.

B. Amendments:

None.

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



556994

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/22/2013	.	
	.	
	.	
	.	

The Committee on Rules (Gardiner) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (n) of subsection (1) of section
154.11, Florida Statutes, is amended to read:

154.11 Powers of board of trustees.—

(1) The board of trustees of each public health trust shall
be deemed to exercise a public and essential governmental
function of both the state and the county and in furtherance
thereof it shall, subject to limitation by the governing body of
the county in which such board is located, have all of the



556994

14 powers necessary or convenient to carry out the operation and
15 governance of designated health care facilities, including, but
16 without limiting the generality of, the foregoing:

17 (n) To appoint originally the staff of physicians to
18 practice in a ~~any~~ designated facility owned or operated by the
19 board and to approve the bylaws and rules to be adopted by the
20 medical staff of a ~~any~~ designated facility owned and operated by
21 the board, such governing regulations shall ~~to be in accordance~~
22 ~~with the standards of the Joint Commission on the Accreditation~~
23 ~~of Hospitals which~~ provide, among other things, for the method
24 of appointing additional staff members and for the removal of
25 staff members.

26 Section 2. Subsection (2) of section 394.741, Florida
27 Statutes, is amended to read:

28 394.741 Accreditation requirements for providers of
29 behavioral health care services.-

30 (2) Notwithstanding any provision of law to the contrary,
31 accreditation shall be accepted by the agency and department in
32 lieu of the agency's and department's facility licensure onsite
33 review requirements and shall be accepted as a substitute for
34 the department's administrative and program monitoring
35 requirements, except as required by subsections (3) and (4),
36 for:

37 (a) An ~~Any~~ organization from which the department purchases
38 behavioral health care services which ~~that~~ is accredited by an
39 accrediting organization whose standards incorporate comparable
40 licensure regulations required by this state ~~the Joint~~
41 ~~Commission on Accreditation of Healthcare Organizations or the~~
42 ~~Council on Accreditation for Children and Family Services, or~~



556994

43 ~~has those services that are being purchased by the department~~
44 ~~accredited by CARF—the Rehabilitation Accreditation Commission.~~

45 (b) A Any mental health facility licensed by the agency or
46 a any substance abuse component licensed by the department which
47 ~~that~~ is accredited by an accrediting organization whose
48 standards incorporate comparable licensure regulations required
49 by this state the Joint Commission on Accreditation of
50 ~~Healthcare Organizations, CARF—the Rehabilitation Accreditation~~
51 ~~Commission, or the Council on Accreditation of Children and~~
52 ~~Family Services.~~

53 (c) A Any network of providers from which the department or
54 the agency purchases behavioral health care services accredited
55 by an accrediting organization whose standards incorporate
56 comparable licensure regulations required by this state the
57 ~~Joint Commission on Accreditation of Healthcare Organizations,~~
58 ~~CARF—the Rehabilitation Accreditation Commission, the Council on~~
59 ~~Accreditation of Children and Family Services, or the National~~
60 ~~Committee for Quality Assurance.~~ A provider organization that,
61 ~~which~~ is part of an accredited network, is afforded the same
62 rights under this part.

63 Section 3. Section 395.3038, Florida Statutes, is amended
64 to read:

65 395.3038 State-listed primary stroke centers and
66 comprehensive stroke centers; notification of hospitals.—

67 (1) The agency shall make available on its website and to
68 the department a list of the name and address of each hospital
69 that meets the criteria for a primary stroke center and the name
70 and address of each hospital that meets the criteria for a
71 comprehensive stroke center. The list of primary and



556994

72 comprehensive stroke centers must ~~shall~~ include only those
73 hospitals that attest in an affidavit submitted to the agency
74 that the hospital meets the named criteria, or those hospitals
75 that attest in an affidavit submitted to the agency that the
76 hospital is certified as a primary or a comprehensive stroke
77 center by an accrediting organization ~~the Joint Commission on~~
78 ~~Accreditation of Healthcare Organizations.~~

79 (2) (a) If a hospital no longer chooses to meet the criteria
80 for a primary or comprehensive stroke center, the hospital shall
81 notify the agency and the agency shall immediately remove the
82 hospital from the list.

83 (b)1. This subsection does not apply if the hospital is
84 unable to provide stroke treatment services for a period of time
85 not to exceed 2 months. The hospital shall immediately notify
86 all local emergency medical services providers when the
87 temporary unavailability of stroke treatment services begins and
88 when the services resume.

89 2. If stroke treatment services are unavailable for more
90 than 2 months, the agency shall remove the hospital from the
91 list of primary or comprehensive stroke centers until the
92 hospital notifies the agency that stroke treatment services have
93 been resumed.

94 ~~(3) The agency shall notify all hospitals in this state by~~
95 ~~February 15, 2005, that the agency is compiling a list of~~
96 ~~primary stroke centers and comprehensive stroke centers in this~~
97 ~~state. The notice shall include an explanation of the criteria~~
98 ~~necessary for designation as a primary stroke center and the~~
99 ~~criteria necessary for designation as a comprehensive stroke~~
100 ~~center. The notice shall also advise hospitals of the process by~~



556994

101 ~~which a hospital might be added to the list of primary or~~
102 ~~comprehensive stroke centers.~~

103 (3)~~(4)~~ The agency shall adopt by rule criteria for a
104 primary stroke center which are substantially similar to the
105 certification standards for primary stroke centers of the Joint
106 Commission ~~on Accreditation of Healthcare Organizations.~~

107 (4)~~(5)~~ The agency shall adopt by rule criteria for a
108 comprehensive stroke center. However, if the Joint Commission ~~on~~
109 ~~Accreditation of Healthcare Organizations~~ establishes criteria
110 for a comprehensive stroke center, ~~the~~ agency rules shall be
111 ~~establish criteria for a comprehensive stroke center which are~~
112 ~~substantially similar to those criteria established by the Joint~~
113 ~~Commission on Accreditation of Healthcare Organizations.~~

114 (5)~~(6)~~ This act is not a medical practice guideline and may
115 not be used to restrict the authority of a hospital to provide
116 services for which it is licensed ~~has received a license~~ under
117 chapter 395. The Legislature intends that all patients be
118 treated individually based on each patient's needs and
119 circumstances.

120 Section 4. Subsection (3) of section 397.403, Florida
121 Statutes, is amended to read:

122 397.403 License application.—

123 (3) The department shall accept proof of accreditation by
124 an accrediting organization whose standards incorporate
125 comparable licensure regulations required by this state ~~the~~
126 ~~Commission on Accreditation of Rehabilitation Facilities (CARF)~~
127 ~~or the joint commission~~, or through another ~~any other~~ nationally
128 recognized certification process that is acceptable to the
129 department and meets the minimum licensure requirements under



556994

130 this chapter, in lieu of requiring the applicant to submit the
131 information required by paragraphs (1)(a)-(c).

132 Section 5. Subsection (1) of section 400.925, Florida
133 Statutes, is amended to read:

134 400.925 Definitions.—As used in this part, the term:

135 (1) "Accrediting organizations" means an organization ~~the~~
136 ~~Joint Commission on Accreditation of Healthcare Organizations or~~
137 ~~other national accreditation agencies~~ whose standards
138 incorporate licensure regulations for accreditation are
139 ~~comparable to those required by this state part for licensure.~~

140 Section 6. Paragraph (g) of subsection (1) and paragraph
141 (a) of subsection (7) of section 400.9935, Florida Statutes, are
142 amended to read:

143 400.9935 Clinic responsibilities.—

144 (1) Each clinic shall appoint a medical director or clinic
145 director who shall agree in writing to accept legal
146 responsibility for the following activities on behalf of the
147 clinic. The medical director or the clinic director shall:

148 (g) Conduct systematic reviews of clinic billings to ensure
149 that the billings are not fraudulent or unlawful. Upon discovery
150 of an unlawful charge, the medical director or clinic director
151 shall take immediate corrective action. If the clinic performs
152 only the technical component of magnetic resonance imaging,
153 static radiographs, computed tomography, or positron emission
154 tomography, and provides the professional interpretation of such
155 services, in a fixed facility that is accredited by a national
156 accrediting organization that is approved by the Centers for
157 Medicare and Medicaid Services for magnetic resonance imaging
158 and advanced diagnostic imaging services ~~the Joint Commission on~~



556994

159 ~~Accreditation of Healthcare Organizations or the Accreditation~~
160 ~~Association for Ambulatory Health Care, and the American College~~
161 ~~of Radiology;~~ and if, in the preceding quarter, the percentage
162 of scans performed by that clinic which was billed to all
163 personal injury protection insurance carriers was less than 15
164 percent, the chief financial officer of the clinic may, in a
165 written acknowledgment provided to the agency, assume the
166 responsibility for the conduct of the systematic reviews of
167 clinic billings to ensure that the billings are not fraudulent
168 or unlawful.

169 (7) (a) Each clinic engaged in magnetic resonance imaging
170 services must be accredited by a national accrediting
171 organization that is approved by the Centers for Medicare and
172 Medicaid Services for magnetic resonance imaging and advanced
173 diagnostic imaging services ~~the Joint Commission on~~
174 ~~Accreditation of Healthcare Organizations, the American College~~
175 ~~of Radiology, or the Accreditation Association for Ambulatory~~
176 ~~Health Care,~~ within 1 year after licensure. A clinic that is
177 accredited by ~~the American College of Radiology~~ or that is
178 within the original 1-year period after licensure and replaces
179 its core magnetic resonance imaging equipment shall be given 1
180 year after the date on which the equipment is replaced to attain
181 accreditation. However, a clinic may request a single, 6-month
182 extension if it provides evidence to the agency establishing
183 that, for good cause shown, such clinic cannot be accredited
184 within 1 year after licensure, and that such accreditation will
185 be completed within the 6-month extension. After obtaining
186 accreditation as required by this subsection, each such clinic
187 must maintain accreditation as a condition of renewal of its



556994

188 license. A clinic that files a change of ownership application
189 must comply with the original accreditation timeframe
190 requirements of the transferor. The agency shall deny a change
191 of ownership application if the clinic is not in compliance with
192 the accreditation requirements. When a clinic adds, replaces, or
193 modifies magnetic resonance imaging equipment and the
194 accrediting ~~accreditation~~ agency requires new accreditation, the
195 clinic must be accredited within 1 year after the date of the
196 addition, replacement, or modification but may request a single,
197 6-month extension if the clinic provides evidence of good cause
198 to the agency.

199 Section 7. Subsections (1) and (2) of section 402.7306,
200 Florida Statutes, are amended to read:

201 402.7306 Administrative monitoring of child welfare
202 providers, and administrative, licensure, and programmatic
203 monitoring of mental health and substance abuse service
204 providers.—The Department of Children and Family Services, the
205 Department of Health, the Agency for Persons with Disabilities,
206 the Agency for Health Care Administration, community-based care
207 lead agencies, managing entities as defined in s. 394.9082, and
208 agencies who have contracted with monitoring agents shall
209 identify and implement changes that improve the efficiency of
210 administrative monitoring of child welfare services, and the
211 administrative, licensure, and programmatic monitoring of mental
212 health and substance abuse service providers. For the purpose of
213 this section, the term "mental health and substance abuse
214 service provider" means a provider who provides services to this
215 state's priority population as defined in s. 394.674. To assist
216 with that goal, each such agency shall adopt the following



556994

217 policies:

218 (1) Limit administrative monitoring to once every 3 years
219 if the child welfare provider is accredited by an accrediting
220 organization whose standards incorporate comparable licensure
221 regulations required by this state ~~the Joint Commission, the~~
222 ~~Commission on Accreditation of Rehabilitation Facilities, or the~~
223 ~~Council on Accreditation~~. If the accrediting body does not
224 require documentation that the state agency requires, that
225 documentation shall be requested by the state agency and may be
226 posted by the service provider on the data warehouse for the
227 agency's review. Notwithstanding the survey or inspection of an
228 accrediting organization specified in this subsection, an agency
229 specified in and subject to this section may continue to monitor
230 the service provider as necessary with respect to:

231 (a) Ensuring that services for which the agency is paying
232 are being provided.

233 (b) Investigating complaints or suspected problems and
234 monitoring the service provider's compliance with ~~any~~ resulting
235 negotiated terms and conditions, including provisions relating
236 to consent decrees that are unique to a specific service and are
237 not statements of general applicability.

238 (c) Ensuring compliance with federal and state laws,
239 federal regulations, or state rules if such monitoring does not
240 duplicate the accrediting organization's review pursuant to
241 accreditation standards.

242
243 Medicaid certification and precertification reviews are exempt
244 from this subsection to ensure Medicaid compliance.

245 (2) Limit administrative, licensure, and programmatic



556994

246 monitoring to once every 3 years if the mental health or
247 substance abuse service provider is accredited by an accrediting
248 organization whose standards incorporate comparable licensure
249 regulations required by this state ~~the Joint Commission, the~~
250 ~~Commission on Accreditation of Rehabilitation Facilities, or the~~
251 ~~Council on Accreditation~~. If the services being monitored are
252 not the services for which the provider is accredited, the
253 limitations of this subsection do not apply. If the accrediting
254 body does not require documentation that the state agency
255 requires, that documentation, except documentation relating to
256 licensure applications and fees, must be requested by the state
257 agency and may be posted by the service provider on the data
258 warehouse for the agency's review. Notwithstanding the survey or
259 inspection of an accrediting organization specified in this
260 subsection, an agency specified in and subject to this section
261 may continue to monitor the service provider as necessary with
262 respect to:

263 (a) Ensuring that services for which the agency is paying
264 are being provided.

265 (b) Investigating complaints, identifying problems that
266 would affect the safety or viability of the service provider,
267 and monitoring the service provider's compliance with ~~any~~
268 resulting negotiated terms and conditions, including provisions
269 relating to consent decrees that are unique to a specific
270 service and are not statements of general applicability.

271 (c) Ensuring compliance with federal and state laws,
272 federal regulations, or state rules if such monitoring does not
273 duplicate the accrediting organization's review pursuant to
274 accreditation standards.



556994

275
276 Federal certification and precertification reviews are exempt
277 from this subsection to ensure Medicaid compliance.

278 Section 8. Paragraph (k) of subsection (3) of section
279 408.05, Florida Statutes, is amended to read:

280 408.05 Florida Center for Health Information and Policy
281 Analysis.—

282 (3) COMPREHENSIVE HEALTH INFORMATION SYSTEM.—In order to
283 produce comparable and uniform health information and statistics
284 for the development of policy recommendations, the agency shall
285 perform the following functions:

286 (k) Develop, in conjunction with the State Consumer Health
287 Information and Policy Advisory Council, and implement a long-
288 range plan for making available health care quality measures and
289 financial data that will allow consumers to compare health care
290 services. The health care quality measures and financial data
291 the agency must make available includes ~~shall include~~, but is
292 not limited to, pharmaceuticals, physicians, health care
293 facilities, and health plans and managed care entities. The
294 agency shall update the plan and report on the status of its
295 implementation annually. The agency shall also make the plan and
296 status report available to the public on its Internet website.
297 As part of the plan, the agency shall identify the process and
298 timeframes for implementation, ~~any~~ barriers to implementation,
299 and recommendations of changes in the law that may be enacted by
300 the Legislature to eliminate the barriers. As preliminary
301 elements of the plan, the agency shall:

302 1. Make available patient-safety indicators, inpatient
303 quality indicators, and performance outcome and patient charge



304 data collected from health care facilities pursuant to s.
305 408.061(1)(a) and (2). The terms "patient-safety indicators" and
306 "inpatient quality indicators" have the same meaning as that
307 ascribed shall be as defined by the Centers for Medicare and
308 Medicaid Services, an accrediting organization whose standards
309 incorporate comparable regulations required by this state, ~~the~~
310 ~~National Quality Forum, the Joint Commission on Accreditation of~~
311 ~~Healthcare Organizations, the Agency for Healthcare Research and~~
312 ~~Quality, the Centers for Disease Control and Prevention,~~ or a
313 ~~similar~~ national entity that establishes standards to measure
314 the performance of health care providers, or by other states.
315 The agency shall determine which conditions, procedures, health
316 care quality measures, and patient charge data to disclose based
317 upon input from the council. When determining which conditions
318 and procedures are to be disclosed, the council and the agency
319 shall consider variation in costs, variation in outcomes, and
320 magnitude of variations and other relevant information. When
321 determining which health care quality measures to disclose, the
322 agency:

323 a. Shall consider such factors as volume of cases; average
324 patient charges; average length of stay; complication rates;
325 mortality rates; and infection rates, among others, which shall
326 be adjusted for case mix and severity, if applicable.

327 b. May consider such additional measures that are adopted
328 by the Centers for Medicare and Medicaid Studies, an accrediting
329 organization whose standards incorporate comparable regulations
330 required by this state, ~~the~~ National Quality Forum, the Joint
331 ~~Commission on Accreditation of Healthcare Organizations,~~ the
332 Agency for Healthcare Research and Quality, the Centers for



556994

333 Disease Control and Prevention, or a similar national entity
334 that establishes standards to measure the performance of health
335 care providers, or by other states.
336

337 When determining which patient charge data to disclose, the
338 agency shall include such measures as the average of
339 undiscounted charges on frequently performed procedures and
340 preventive diagnostic procedures, the range of procedure charges
341 from highest to lowest, average net revenue per adjusted patient
342 day, average cost per adjusted patient day, and average cost per
343 admission, among others.

344 2. Make available performance measures, benefit design, and
345 premium cost data from health plans licensed pursuant to chapter
346 627 or chapter 641. The agency shall determine which health care
347 quality measures and member and subscriber cost data to
348 disclose, based upon input from the council. When determining
349 which data to disclose, the agency shall consider information
350 that may be required by either individual or group purchasers to
351 assess the value of the product, which may include membership
352 satisfaction, quality of care, current enrollment or membership,
353 coverage areas, accreditation status, premium costs, plan costs,
354 premium increases, range of benefits, copayments and
355 deductibles, accuracy and speed of claims payment, credentials
356 of physicians, number of providers, names of network providers,
357 and hospitals in the network. Health plans shall make available
358 to the agency ~~any~~ such data or information that is not currently
359 reported to the agency or the office.

360 3. Determine the method and format for public disclosure of
361 data reported pursuant to this paragraph. The agency shall make



556994

362 its determination based upon input from the State Consumer
363 Health Information and Policy Advisory Council. At a minimum,
364 the data shall be made available on the agency's Internet
365 website in a manner that allows consumers to conduct an
366 interactive search that allows them to view and compare the
367 information for specific providers. The website must include
368 such additional information as is determined necessary to ensure
369 that the website enhances informed decisionmaking among
370 consumers and health care purchasers, which shall include, at a
371 minimum, appropriate guidance on how to use the data and an
372 explanation of why the data may vary from provider to provider.

373 4. Publish on its website undiscounted charges for no fewer
374 than 150 of the most commonly performed adult and pediatric
375 procedures, including outpatient, inpatient, diagnostic, and
376 preventative procedures.

377 Section 9. Paragraph (b) of subsection (3) of section
378 430.80, Florida Statutes, is amended to read:

379 430.80 Implementation of a teaching nursing home pilot
380 project.-

381 (3) To be designated as a teaching nursing home, a nursing
382 home licensee must, at a minimum:

383 (b) Participate in a nationally recognized accrediting
384 ~~accreditation~~ program and hold a valid accreditation, such as
385 the accreditation awarded by the Joint Commission ~~on~~
386 ~~Accreditation of Healthcare Organizations~~, or, at the time of
387 initial designation, possess a Gold Seal Award as conferred by
388 the state on its licensed nursing home;

389 Section 10. Paragraph (a) of subsection (2) of section
390 440.13, Florida Statutes, is amended to read:



556994

391 440.13 Medical services and supplies; penalty for
392 violations; limitations.—
393 (2) MEDICAL TREATMENT; DUTY OF EMPLOYER TO FURNISH.—
394 (a) Subject to the limitations specified elsewhere in this
395 chapter, the employer shall furnish to the employee such
396 medically necessary remedial treatment, care, and attendance for
397 such period as the nature of the injury or the process of
398 recovery may require, which is in accordance with established
399 practice parameters and protocols of treatment as provided for
400 in this chapter, including medicines, medical supplies, durable
401 medical equipment, orthoses, prostheses, and other medically
402 necessary apparatus. Remedial treatment, care, and attendance,
403 including work-hardening programs or pain-management programs
404 accredited by an accrediting organization whose standards
405 incorporate comparable regulations required by this state ~~the~~
406 ~~Commission on Accreditation of Rehabilitation Facilities or~~
407 ~~Joint Commission on the Accreditation of Health Organizations~~ or
408 pain-management programs affiliated with medical schools, shall
409 be considered ~~as~~ covered treatment only when such care is given
410 based on a referral by a physician as defined in this chapter.
411 Medically necessary treatment, care, and attendance does not
412 include chiropractic services in excess of 24 treatments or
413 rendered 12 weeks beyond the date of the initial chiropractic
414 treatment, whichever comes first, unless the carrier authorizes
415 additional treatment or the employee is catastrophically
416 injured.
417
418 Failure of the carrier to timely comply with this subsection
419 shall be a violation of this chapter and the carrier shall be



556994

420 subject to penalties as provided for in s. 440.525.

421 Section 11. Subsection (1) of section 627.645, Florida
422 Statutes, is amended to read:

423 627.645 Denial of health insurance claims restricted.-

424 (1) A ~~No~~ claim for payment under a health insurance policy
425 or self-insured program of health benefits for treatment, care,
426 or services in a licensed hospital that ~~which~~ is accredited by
427 an accrediting organization whose standards incorporate
428 comparable regulations required by this state may not ~~the Joint~~
429 ~~Commission on the Accreditation of Hospitals, the American~~
430 ~~Osteopathic Association, or the Commission on the Accreditation~~
431 ~~of Rehabilitative Facilities shall~~ be denied because such
432 hospital lacks major surgical facilities and is primarily of a
433 rehabilitative nature, if such rehabilitation is specifically
434 for treatment of physical disability.

435 Section 12. Paragraph (c) of subsection (2) of section
436 627.668, Florida Statutes, is amended to read:

437 627.668 Optional coverage for mental and nervous disorders
438 required; exception.-

439 (2) Under group policies or contracts, inpatient hospital
440 benefits, partial hospitalization benefits, and outpatient
441 benefits consisting of durational limits, dollar amounts,
442 deductibles, and coinsurance factors shall not be less favorable
443 than for physical illness generally, except that:

444 (c) Partial hospitalization benefits shall be provided
445 under the direction of a licensed physician. For purposes of
446 this part, the term "partial hospitalization services" is
447 defined as those services offered by a program that is
448 accredited by an accrediting organization whose standards



556994

449 incorporate comparable regulations required by this state the
450 ~~Joint Commission on Accreditation of Hospitals (JCAH) or in~~
451 ~~compliance with equivalent standards.~~ Alcohol rehabilitation
452 programs accredited by an accrediting organization whose
453 standards incorporate comparable regulations required by this
454 state the Joint Commission on Accreditation of Hospitals or
455 approved by the state and licensed drug abuse rehabilitation
456 programs shall also be qualified providers under this section.
457 In a given ~~any~~ benefit year, if partial hospitalization services
458 or a combination of inpatient and partial hospitalization are
459 used ~~utilized~~, the total benefits paid for all such services may
460 ~~shall~~ not exceed the cost of 30 days after ~~of~~ inpatient
461 hospitalization for psychiatric services, including physician
462 fees, which prevail in the community in which the partial
463 hospitalization services are rendered. If partial
464 hospitalization services benefits are provided beyond the limits
465 set forth in this paragraph, the durational limits, dollar
466 amounts, and coinsurance factors thereof need not be the same as
467 those applicable to physical illness generally.

468 Section 13. Subsection (3) of section 627.669, Florida
469 Statutes, is amended to read:

470 627.669 Optional coverage required for substance abuse
471 impaired persons; exception.-

472 (3) The benefits provided under this section are ~~shall be~~
473 applicable only if treatment is provided by, or under the
474 supervision of, or is prescribed by, a licensed physician or
475 licensed psychologist and if services are provided in a program
476 that is accredited by an accrediting organization whose
477 standards incorporate comparable regulations required by this



556994

478 ~~state the Joint Commission on Accreditation of Hospitals~~ or that
479 is approved by this ~~the~~ state.

480 Section 14. Paragraph (a) of subsection (1) of section
481 627.736, Florida Statutes, is amended to read:

482 627.736 Required personal injury protection benefits;
483 exclusions; priority; claims.—

484 (1) REQUIRED BENEFITS.—An insurance policy complying with
485 the security requirements of s. 627.733 must provide personal
486 injury protection to the named insured, relatives residing in
487 the same household, persons operating the insured motor vehicle,
488 passengers in the motor vehicle, and other persons struck by the
489 motor vehicle and suffering bodily injury while not an occupant
490 of a self-propelled vehicle, subject to subsection (2) and
491 paragraph (4) (e), to a limit of \$10,000 in medical and
492 disability benefits and \$5,000 in death benefits resulting from
493 bodily injury, sickness, disease, or death arising out of the
494 ownership, maintenance, or use of a motor vehicle as follows:

495 (a) *Medical benefits.*—Eighty percent of all reasonable
496 expenses for medically necessary medical, surgical, X-ray,
497 dental, and rehabilitative services, including prosthetic
498 devices and medically necessary ambulance, hospital, and nursing
499 services if the individual receives initial services and care
500 pursuant to subparagraph 1. within 14 days after the motor
501 vehicle accident. The medical benefits provide reimbursement
502 only for:

503 1. Initial services and care that are lawfully provided,
504 supervised, ordered, or prescribed by a physician licensed under
505 chapter 458 or chapter 459, a dentist licensed under chapter
506 466, or a chiropractic physician licensed under chapter 460 or



556994

507 that are provided in a hospital or in a facility that owns, or
508 is wholly owned by, a hospital. Initial services and care may
509 also be provided by a person or entity licensed under part III
510 of chapter 401 which provides emergency transportation and
511 treatment.

512 2. Upon referral by a provider described in subparagraph
513 1., followup services and care consistent with the underlying
514 medical diagnosis rendered pursuant to subparagraph 1. which may
515 be provided, supervised, ordered, or prescribed only by a
516 physician licensed under chapter 458 or chapter 459, a
517 chiropractic physician licensed under chapter 460, a dentist
518 licensed under chapter 466, or, to the extent permitted by
519 applicable law and under the supervision of such physician,
520 osteopathic physician, chiropractic physician, or dentist, by a
521 physician assistant licensed under chapter 458 or chapter 459 or
522 an advanced registered nurse practitioner licensed under chapter
523 464. Followup services and care may also be provided by ~~any of~~
524 the following persons or entities:

525 a. A hospital or ambulatory surgical center licensed under
526 chapter 395.

527 b. An entity wholly owned by one or more physicians
528 licensed under chapter 458 or chapter 459, chiropractic
529 physicians licensed under chapter 460, or dentists licensed
530 under chapter 466 or by such practitioners and the spouse,
531 parent, child, or sibling of such practitioners.

532 c. An entity that owns or is wholly owned, directly or
533 indirectly, by a hospital or hospitals.

534 d. A physical therapist licensed under chapter 486, based
535 upon a referral by a provider described in this subparagraph.



556994

536 e. A health care clinic licensed under part X of chapter
537 400 which is accredited by an accrediting organization whose
538 standards incorporate comparable regulations required by this
539 state ~~the Joint Commission on Accreditation of Healthcare~~
540 ~~Organizations, the American Osteopathic Association, the~~
541 ~~Commission on Accreditation of Rehabilitation Facilities, or the~~
542 ~~Accreditation Association for Ambulatory Health Care, Inc., or~~

543 (I) Has a medical director licensed under chapter 458,
544 chapter 459, or chapter 460;

545 (II) Has been continuously licensed for more than 3 years
546 or is a publicly traded corporation that issues securities
547 traded on an exchange registered with the United States
548 Securities and Exchange Commission as a national securities
549 exchange; and

550 (III) Provides at least four of the following medical
551 specialties:

552 (A) General medicine.

553 (B) Radiography.

554 (C) Orthopedic medicine.

555 (D) Physical medicine.

556 (E) Physical therapy.

557 (F) Physical rehabilitation.

558 (G) Prescribing or dispensing outpatient prescription
559 medication.

560 (H) Laboratory services.

561 3. Reimbursement for services and care provided in
562 subparagraph 1. or subparagraph 2. up to \$10,000 if a physician
563 licensed under chapter 458 or chapter 459, a dentist licensed
564 under chapter 466, a physician assistant licensed under chapter



556994

565 458 or chapter 459, or an advanced registered nurse practitioner
566 licensed under chapter 464 has determined that the injured
567 person had an emergency medical condition.

568 4. Reimbursement for services and care provided in
569 subparagraph 1. or subparagraph 2. is limited to \$2,500 if a ~~any~~
570 provider listed in subparagraph 1. or subparagraph 2. determines
571 that the injured person did not have an emergency medical
572 condition.

573 5. Medical benefits do not include massage as defined in s.
574 480.033 or acupuncture as defined in s. 457.102, regardless of
575 the person, entity, or licensee providing massage or
576 acupuncture, and a licensed massage therapist or licensed
577 acupuncturist may not be reimbursed for medical benefits under
578 this section.

579 6. The Financial Services Commission shall adopt by rule
580 the form that must be used by an insurer and a health care
581 provider specified in sub-subparagraph 2.b., sub-subparagraph
582 2.c., or sub-subparagraph 2.e. to document that the health care
583 provider meets the criteria of this paragraph. Such, ~~which~~ rule
584 must include a requirement for a sworn statement or affidavit.

585
586 Only insurers writing motor vehicle liability insurance in this
587 state may provide the required benefits of this section, and
588 such insurer may not require the purchase of any other motor
589 vehicle coverage other than the purchase of property damage
590 liability coverage as required by s. 627.7275 as a condition for
591 providing such benefits. Insurers may not require that property
592 damage liability insurance in an amount greater than \$10,000 be
593 purchased in conjunction with personal injury protection. Such



556994

594 insurers shall make benefits and required property damage
595 liability insurance coverage available through normal marketing
596 channels. An insurer writing motor vehicle liability insurance
597 in this state who fails to comply with such availability
598 requirement as a general business practice violates part IX of
599 chapter 626, and such violation constitutes an unfair method of
600 competition or an unfair or deceptive act or practice involving
601 the business of insurance. An insurer committing such violation
602 is subject to the penalties provided under that part, as well as
603 those provided elsewhere in the insurance code.

604 Section 15. Subsection (12) of section 641.495, Florida
605 Statutes, is amended to read:

606 641.495 Requirements for issuance and maintenance of
607 certificate.—

608 (12) The provisions of part I of chapter 395 do not apply
609 to a health maintenance organization that, on or before January
610 1, 1991, provides not more than 10 outpatient holding beds for
611 short-term and hospice-type patients in an ambulatory care
612 facility for its members, provided that such health maintenance
613 organization maintains current accreditation by an accrediting
614 organization whose standards incorporate comparable regulations
615 required by this state ~~the Joint Commission on Accreditation of~~
616 ~~Health Care Organizations, the Accreditation Association for~~
617 ~~Ambulatory Health Care, or the National Committee for Quality~~
618 ~~Assurance.~~

619 Section 16. Subsection (2) of section 766.1015, Florida
620 Statutes, is amended to read:

621 766.1015 Civil immunity for members of or consultants to
622 certain boards, committees, or other entities.—



556994

623 (2) Such committee, board, group, commission, or other
624 entity must be established in accordance with state law, or in
625 accordance with requirements of an applicable accrediting
626 organization whose standards incorporate comparable regulations
627 required by this state ~~the Joint Commission on Accreditation of~~
628 ~~Healthcare Organizations~~, established and duly constituted by
629 one or more public or licensed private hospitals or behavioral
630 health agencies, or established by a governmental agency. To be
631 protected by this section, the act, decision, omission, or
632 utterance may not be made or done in bad faith or with malicious
633 intent.

634 Section 17. This act shall take effect July 1, 2013.

635
636 ===== T I T L E A M E N D M E N T =====

637 And the title is amended as follows:

638 Delete everything before the enacting clause
639 and insert:

640 A bill to be entitled
641 An act relating to health care accreditation; amending
642 ss. 154.11, 394.741, 397.403, 400.925, 400.9935,
643 402.7306, 408.05, 430.80, 440.13, 627.645, 627.668,
644 627.669, 627.736, 641.495, and 766.1015, F.S.;
645 conforming provisions to the revised definition of the
646 term "accrediting organizations" in s. 395.002, F.S.,
647 as amended by s. 4, ch. 2012-66, Laws of Florida, for
648 purposes of hospital licensing and regulation by the
649 Agency for Health Care Administration; amending s.
650 395.3038, F.S.; deleting an obsolete provision
651 relating to a requirement that the agency provide



556994

652 certain notice relating to stroke centers to
653 hospitals; conforming provisions to changes made by
654 the act; providing an effective date.

By the Committee on Banking and Insurance; and Senator Bean

597-04474-13

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A bill to be entitled

An act relating to nursing homes and related health care facilities; amending s. 400.9905, F.S.; clarifying provisions to exempt certain clinics that receive reimbursement under the Florida Motor Vehicle No-Fault Law from licensure requirements in this state if they hold specific federal certification; extending the exemption to clinics that are owned by certain entities; providing an effective date.

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

Section 1. Subsection (4) of section 400.9905, Florida Statutes, is amended to read:

400.9905 Definitions.—

(4) "Clinic" means an entity where health care services are provided to individuals and which tenders charges for reimbursement for such services, including a mobile clinic and a portable equipment provider. As used in this part, the term does not include and the licensure requirements of this part do not apply to:

(a) Entities licensed or registered by the state under chapter 395; entities licensed or registered by the state and providing only health care services within the scope of services authorized under their respective licenses under ss. 383.30-383.335, chapter 390, chapter 394, chapter 397, this chapter except part X, chapter 429, chapter 463, chapter 465, chapter 466, chapter 478, part I of chapter 483, chapter 484, or chapter 651; end-stage renal disease providers authorized under 42

597-04474-13

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C.F.R. part 405, subpart U; providers certified under 42 C.F.R. part 485, subpart B or subpart H; or any entity that provides neonatal or pediatric hospital-based health care services or other health care services by licensed practitioners solely within a hospital licensed under chapter 395.

(b) Entities that own, directly or indirectly, entities licensed or registered by the state pursuant to chapter 395; entities that own, directly or indirectly, entities licensed or registered by the state and providing only health care services within the scope of services authorized pursuant to their respective licenses under ss. 383.30-383.335, chapter 390, chapter 394, chapter 397, this chapter except part X, chapter 429, chapter 463, chapter 465, chapter 466, chapter 478, part I of chapter 483, chapter 484, or chapter 651; end-stage renal disease providers authorized under 42 C.F.R. part 405, subpart U; providers certified under 42 C.F.R. part 485, subpart B or subpart H; or any entity that provides neonatal or pediatric hospital-based health care services by licensed practitioners solely within a hospital licensed under chapter 395.

(c) Entities that are owned, directly or indirectly, by an entity licensed or registered by the state pursuant to chapter 395; entities that are owned, directly or indirectly, by an entity licensed or registered by the state and providing only health care services within the scope of services authorized pursuant to their respective licenses under ss. 383.30-383.335, chapter 390, chapter 394, chapter 397, this chapter except part X, chapter 429, chapter 463, chapter 465, chapter 466, chapter 478, part I of chapter 483, chapter 484, or chapter 651; end-stage renal disease providers authorized under 42 C.F.R. part

597-04474-13 2013594c1

59 405, subpart U; providers certified under 42 C.F.R. part 485,
 60 subpart B or subpart H; or any entity that provides neonatal or
 61 pediatric hospital-based health care services by licensed
 62 practitioners solely within a hospital under chapter 395.

63 (d) Entities that are under common ownership, directly or
 64 indirectly, with an entity licensed or registered by the state
 65 pursuant to chapter 395; entities that are under common
 66 ownership, directly or indirectly, with an entity licensed or
 67 registered by the state and providing only health care services
 68 within the scope of services authorized pursuant to their
 69 respective licenses under ss. 383.30-383.335, chapter 390,
 70 chapter 394, chapter 397, this chapter except part X, chapter
 71 429, chapter 463, chapter 465, chapter 466, chapter 478, part I
 72 of chapter 483, chapter 484, or chapter 651; end-stage renal
 73 disease providers authorized under 42 C.F.R. part 405, subpart
 74 U; providers certified under 42 C.F.R. part 485, subpart B or
 75 subpart H; or any entity that provides neonatal or pediatric
 76 hospital-based health care services by licensed practitioners
 77 solely within a hospital licensed under chapter 395.

78 (e) An entity that is exempt from federal taxation under 26
 79 U.S.C. s. 501(c)(3) or (4), an employee stock ownership plan
 80 under 26 U.S.C. s. 409 that has a board of trustees at least
 81 two-thirds of which are Florida-licensed health care
 82 practitioners and provides only physical therapy services under
 83 physician orders, any community college or university clinic,
 84 and any entity owned or operated by the federal or state
 85 government, including agencies, subdivisions, or municipalities
 86 thereof.

87 (f) A sole proprietorship, group practice, partnership, or

Page 3 of 7

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

597-04474-13 2013594c1

88 corporation that provides health care services by physicians
 89 covered by s. 627.419, that is directly supervised by one or
 90 more of such physicians, and that is wholly owned by one or more
 91 of those physicians or by a physician and the spouse, parent,
 92 child, or sibling of that physician.

93 (g) A sole proprietorship, group practice, partnership, or
 94 corporation that provides health care services by licensed
 95 health care practitioners under chapter 457, chapter 458,
 96 chapter 459, chapter 460, chapter 461, chapter 462, chapter 463,
 97 chapter 466, chapter 467, chapter 480, chapter 484, chapter 486,
 98 chapter 490, chapter 491, or part I, part III, part X, part
 99 XIII, or part XIV of chapter 468, or s. 464.012, and that is
 100 wholly owned by one or more licensed health care practitioners,
 101 or the licensed health care practitioners set forth in this
 102 paragraph and the spouse, parent, child, or sibling of a
 103 licensed health care practitioner if one of the owners who is a
 104 licensed health care practitioner is supervising the business
 105 activities and is legally responsible for the entity's
 106 compliance with all federal and state laws. However, a health
 107 care practitioner may not supervise services beyond the scope of
 108 the practitioner's license, except that, for the purposes of
 109 this part, a clinic owned by a licensee in s. 456.053(3)(b)
 110 which provides only services authorized pursuant to s.
 111 456.053(3)(b) may be supervised by a licensee specified in s.
 112 456.053(3)(b).

113 (h) Clinical facilities affiliated with an accredited
 114 medical school at which training is provided for medical
 115 students, residents, or fellows.

116 (i) Entities that provide only oncology or radiation

Page 4 of 7

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597-04474-13 2013594c1

117 therapy services by physicians licensed under chapter 458 or
 118 chapter 459 or entities that provide oncology or radiation
 119 therapy services by physicians licensed under chapter 458 or
 120 chapter 459 which are owned by a corporation whose shares are
 121 publicly traded on a recognized stock exchange.

122 (j) Clinical facilities affiliated with a college of
 123 chiropractic accredited by the Council on Chiropractic Education
 124 at which training is provided for chiropractic students.

125 (k) Entities that provide licensed practitioners to staff
 126 emergency departments or to deliver anesthesia services in
 127 facilities licensed under chapter 395 and that derive at least
 128 90 percent of their gross annual revenues from the provision of
 129 such services. Entities claiming an exemption from licensure
 130 under this paragraph must provide documentation demonstrating
 131 compliance.

132 (l) Orthotic, ~~or~~ prosthetic, pediatric cardiology, or
 133 perinatology clinical facilities or anesthesia clinical
 134 facilities that are not otherwise exempt under paragraph (a) or
 135 paragraph (k) and that are a publicly traded corporation or that
 136 are wholly owned, directly or indirectly, by a publicly traded
 137 corporation. As used in this paragraph, a publicly traded
 138 corporation is a corporation that issues securities traded on an
 139 exchange registered with the United States Securities and
 140 Exchange Commission as a national securities exchange.

141 (m) Entities that are owned by a corporation that has \$250
 142 million or more in total annual sales of health care services
 143 provided by licensed health care practitioners where one or more
 144 of the persons responsible for the operation of the entity
 145 ~~owners~~ is a health care practitioner who is licensed in this

597-04474-13 2013594c1

146 state and who is responsible for supervising the business
 147 activities of the entity and is legally responsible for the
 148 entity's compliance with state law for purposes of this part.

149 (n) Entities that employ 50 or more licensed health care
 150 practitioners licensed under chapter 458 or chapter 459 where
 151 the billing for medical services is under a single tax
 152 identification number. The application for exemption under this
 153 subsection shall contain information that includes: the name,
 154 residence, and business address and phone number of the entity
 155 that owns the practice; a complete list of the names and contact
 156 information of all the officers and directors of the
 157 corporation; the name, residence address, business address, and
 158 medical license number of each licensed Florida health care
 159 practitioner employed by the entity; the corporate tax
 160 identification number of the entity seeking an exemption; a
 161 listing of health care services to be provided by the entity at
 162 the health care clinics owned or operated by the entity and a
 163 certified statement prepared by an independent certified public
 164 accountant which states that the entity and the health care
 165 clinics owned or operated by the entity have not received
 166 payment for health care services under personal injury
 167 protection insurance coverage for the preceding year. If the
 168 agency determines that an entity which is exempt under this
 169 subsection has received payments for medical services under
 170 personal injury protection insurance coverage, the agency may
 171 deny or revoke the exemption from licensure under this
 172 subsection.

173
 174 Notwithstanding this subsection, an entity shall be deemed a

597-04474-13

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175 clinic and must be licensed under this part in order to receive
176 reimbursement under the Florida Motor Vehicle No-Fault Law, ss.
177 627.730-627.7405, unless exempted under s. 627.736(5)(h) or
178 under this subsection as a provider certified under 42 C.F.R.
179 part 485, subpart H, before June 30, 2014. However, if a single
180 legal entity owns clinics certified under 42 C.F.R. part 485,
181 subpart H, which are exempted under this provision, the
182 exemption extends after June 30, 2014, to other clinics
183 certified under 42 C.F.R. part 485, subpart H, which are owned
184 by that entity.

185 Section 2. This act shall take effect July 1, 2013.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Health Policy, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health
and Human Services
Commerce and Tourism
Communications, Energy, and Public Utilities
Governmental Oversight and Accountability

SELECT COMMITTEE:
Select Committee on Patient Protection
and Affordable Care Act

SENATOR AARON BEAN

4th District

April 17, 2013

Honorable John Thrasher
Chair, Rules Committee
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

RECEIVED

APR 17 2013

SENATE
RULES COMMITTEE

Dear Chairman Thrasher:

I am writing to respectfully request you consider placing CS/SB 594 relating to Nursing Homes and Related Health Care Facilities on the next Rules Committee agenda.

Thank you in advance for your consideration. As always, please do not hesitate to contact me with any question or comments you, or your staff may have.

Respectfully,

A handwritten signature in cursive script that reads "Aaron Bean".

Aaron Bean
Senator, 4th District

Cc: John Phelps, Staff Director
402 SOB

REPLY TO:

- 1919 Atlantic Boulevard, Jacksonville, Florida 32207 (904) 346-5039 FAX: (888) 263-1578
- 302 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5004 FAX: (850) 410-4805

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 1868

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Bean

SUBJECT: Public Records/Payment Instrument Transaction/Office of Financial Regulation

DATE: April 19, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Naf	McVaney	GO	Fav/CS
2.	Naf	Phelps	RC	Favorable
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 1868 is a public records bill that is linked to SB 410.

In pertinent part, SB 410 requires specified information relating to a check cashing transaction exceeding \$1,000 to be submitted to a database operated by the Office of Financial Regulation (OFR). This bill creates a public records exemption for payment instrument transaction information held in the database by the OFR. Specifically, any such information that identifies a licensee, payor, payee, or conductor is confidential and exempt from public records disclosure requirements.

This bill authorizes a licensee to access information that it submits to the OIR for inclusion in the database. It also authorizes OFR to enter into information-sharing agreements with the Department of Financial Services, law enforcement agencies, and other governmental agencies in certain circumstances, and requires those agencies to maintain the confidentiality of the information, except as otherwise required by court order.

This bill provides for repeal of the exemption on October 2, 2018, pursuant to the Open Government Sunset Review Act, unless reviewed and reenacted by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

Because this bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

This bill creates section 560.312 of the Florida Statutes.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

⁴ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁵ Section 119.07(1)(a), F.S.

⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

⁷ FLA. CONST., art. I, s. 24(c).

substantive provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

The Open Government Sunset Review Act¹⁰ requires a newly created or expanded public records exemption to be repealed on October 2 of the fifth year after enactment, unless reviewed and reenacted by the Legislature.¹¹ It further provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet the public purpose it serves.¹²

SB 410: Payment Instrument Transaction Database

Current law requires each money services business licensee¹³ and its authorized vendors to maintain all information necessary for determining compliance with the chapter under which they are licensed.¹⁴ In addition, licensed check cashers and foreign currency exchangers¹⁵ must maintain specified information on each transaction in which the payment instrument¹⁶ exceeds \$1,000.¹⁷

Current law also requires the Office of Financial Regulation (OFR) to implement a database for deferred presentment¹⁸ providers.¹⁹ Before entering into a deferred presentment transaction, a deferred presentment provider must submit specified data for inclusion in the database.²⁰

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ Section 119.15, F.S.

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(5)(b), F.S.

¹³ Licensed pursuant to ch. 560, F.S. The following entities are exempt:

- Banks, credit card banks, credit unions, trust companies, associations, offices of an international banking corporation, Edge Act or agreement corporations, or other financial depository institutions organized under the laws of any state or the United States;
- The United States or any agency or instrumentality thereof; and
- The state of Florida or any of its political subdivisions (s. 560.104, F.S.).

¹⁴ Section 560.1105, F.S.

¹⁵ Check cashing and foreign currency exchange licensure is not required for a person cashing payment instruments that have an aggregate face value of less than \$2,000 per person per day and that are incidental to the retail sale of goods or services whose compensation for cashing payment instruments at each site does not exceed 5 percent or the total gross income from the retail sale of goods or services by such person during the last 60 days (s. 560.304, F.S.).

¹⁶ “Payment instrument” means a check, draft, warrant, money order, travelers check, electronic instrument, or other instrument, payment of money, or monetary value whether or not negotiable. The term does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit. Section 560.103(29), F.S.

¹⁷ Section 560.310(2), F.S. Such information includes:

- Customer files;
- A copy of the personal identification that bears a photograph of the customer used as identification and presented by the customer;
- A thumbprint of the customer taken by the licensee when the payment instrument is present for negotiation or payment

¹⁸ “Deferred presentment transaction” means providing currency or a payment instrument in exchange for a drawer’s check and agreeing to hold the check for a deferment period. “Deferment period” means the number of days a deferred presentment provider agrees to defer depositing, presenting, or redeeming a payment instrument. “Drawer” means a customer who writes a personal check and upon whose account the check is drawn. Section 560.402, F.S.

¹⁹ Section 560.404(23), F.S.

²⁰ *Id.* Such required information includes:

In pertinent part, SB 410 requires a licensed check casher, before entering into a transaction in which the payment instrument exceeds \$1,000, to submit specified information for inclusion in the deferred presentment database. The information that must be submitted includes:

- Transaction data.
- Payor name.
- Payee name.
- Customer name, if different from the payee name.
- Amount of the payment instrument.
- Amount of currency provided.
- Type of payment instrument, which may include personal, payroll, government, corporate, third-party, or another type of instrument.
- Amount of the fee charged for cashing the payment instrument.
- Branch or location where the payment instrument was accepted.
- Type of identification and identification number presented by the payee or customer.
- Payee's workers' compensation insurance policy number, if the payee is a business.

A 2008 grand jury report found that some contractors and check cashers have colluded on a scheme that allows the contractors to hide their payroll and obtain workers' compensation coverage without purchasing such coverage; additionally, such contractors may avoid the payment of state and federal taxes.²¹ In 2011, the Chief Financial Officer formed a Money Service Business Facilitated Workers' Compensation Work Group to study the issue of workers' compensation premium fraud facilitated by check cashers. The work group's recommendations include the establishment of a statewide database for regulators and law enforcement to use in the detection of workers' compensation insurance fraud.²²

The submission of certain check cashing information to the database may enhance the ability of regulators and law enforcement to effectively target individuals who are engaging in criminal activity, and would allow information to be compared on a statewide basis. However, the database would include personal financial information of those utilizing check cashing services and private business transaction information that is traditionally private.

III. Effect of Proposed Changes:

This bill, which is linked to SB 410, creates a public records exemption for certain payment instrument transaction information held by the OFR. Specifically, payment instrument

-
- The drawer's name, social security number or employment authorization alien number, address, and driver's license number;
 - The amount and date of the transaction;
 - The date that the transaction is closed; and
 - Such additional information as is required by rule.

²¹ *Check Cashers: A Call for Enforcement*, Eighteenth Statewide Grand Jury, Case No. SC 07-1128, Second Interim Report of the Statewide Grand Jury, March 2008. For their participation and risk, the check cashers may receive a greater fee for cashing the checks than is allowed by statute (authorized fees are set forth in s. 560.304(8), F.S.).

²² *A Report by the Money Service Business Facilitated-Workers' Compensation Fraud Work Group*, available online at http://www.myfloridacfo.com/siteDocs/MoneyServiceBusiness/WC_MSBReport-Rec.pdf (last viewed April 15, 2013).

transaction information held in the database that identifies a licensee, payor, payee, or conductor²³ is confidential and exempt from public records disclosure requirements.

The bill authorizes a licensee to access information that it submits to the OFR for inclusion in the database. In addition, the bill authorizes the OFR to enter into agreements with the Department of Financial Services, law enforcement agencies, and other governmental agencies in order to share confidential and exempt information contained in the database for purposes of detecting and deterring financial crimes and workers' compensation violations. Any department or agency that receives the confidential and exempt information must maintain the confidentiality of that information, unless a court order compels production of the information.

The bill provides that the exemption is subject to the Open Sunset Review Act and stands repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

The bill's effective date is contingent upon passage of SB 410 or similar legislation.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a bill creating a new public records exemption to pass by a two-thirds vote of the members present and voting in each house of the Legislature; therefore, this bill requires a two-thirds vote.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a bill creating a new public records exemption to contain a public necessity statement justifying the exemption; therefore, this bill contains a public necessity statement.

C. Trust Funds Restrictions:

None.

²³ A "conductor" is a natural person who presents himself or herself to a licensee for purposes of cashing a payment instrument (s. 560.103(9), F.S.).

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

None.

B. Private Sector Impact:

The bill may benefit the private sector. By making the identities of payees and customers confidential, personal financial information will be protected. Similarly, by making the identities of payors and licensees confidential, business information will be protected.

C. Government Sector Impact:

The bill likely could create a minimal fiscal impact on the OFR, because staff responsible for complying with public records requests could require training related to the public records exemption. In addition, the OFR could incur costs associated with redaction of the confidential and exempt information prior to releasing a record. The costs would be absorbed, however, as they are part of the day-to-day responsibilities of the OFR.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

CS by Governmental Oversight and Accountability on April 16, 2013:

The CS provides that the entire statutory section created by the bill is subject to the Open Government Sunset Review Act, instead of just subsection (1).

B. Amendments:

None.

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

585-04493-13

20131868c1

A bill to be entitled

An act relating to public records; creating s. 560.312, F.S.; providing an exemption from public records requirements for payment instrument transaction information held by the Office of Financial Regulation; providing for specified access to such information; authorizing the office to enter into information-sharing agreements and provide access to information contained in the database to certain governmental agencies; requiring a department or agency that receives confidential information to maintain the confidentiality of the information, except as otherwise required by court order; providing for future review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Section 560.312, Florida Statutes, is created to read:

560.312 Database of payment instrument transactions; confidentiality.—

(1) Payment instrument transaction information held by the office pursuant to s. 560.310 which identifies a licensee, payor, payee, or conductor is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(2) (a) A licensee may access information that it submits to the office for inclusion in the database.

Page 1 of 4

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(b) The office, to the extent permitted by state and federal law, may enter into information-sharing agreements with the department, law enforcement agencies, and other governmental agencies and, in accordance with such agreements, may provide the department, law enforcement agencies, and other governmental agencies with access to information contained in the database for use in detecting and deterring financial crimes and workers' compensation violations, pursuant to chapter 440. Any department or agency that receives confidential information from the office under this paragraph must maintain the confidentiality of the information, unless, and only to the extent that, a court order compels production of the information to a specific party or parties.

(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that payment instrument transaction information held by the Office of Financial Regulation pursuant to s. 560.310, Florida Statutes, which identifies a licensee, payor, payee, or conductor be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Pursuant to s. 560.310, Florida Statutes, money services businesses that cash a payment instrument exceeding \$1,000 must submit information about the transaction to the Office of Financial Regulation in order to deter money laundering through these entities and in response to the findings of the Money Service Business Facilitated Workers'

Page 2 of 4

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585-04493-13 20131868c1

59 Compensation Fraud Work Group that these entities are being used
60 to facilitate financial crimes, including fraud relating to
61 workers' compensation. The report issued by the group found that
62 this type of workers' compensation fraud could be costing the
63 state up to \$1 billion annually in unreported payroll taxes,
64 unreported premium taxes, and higher costs to insurance carriers
65 that must process workers' compensation claims from uninsured
66 workers. This type of fraud places tremendous pressure on law-
67 abiding businesses to absorb these costs. Submission of this
68 information to the office is intended to assist the office, the
69 Department of Financial Services, law enforcement agencies, and
70 other governmental agencies in detecting and deterring these
71 financial crimes and related fraudulent activities. The
72 availability of this information to these agencies will help to
73 increase premium collection, lower costs to insurance carriers,
74 and alleviate premium avoidance, as well as reduce the cost of
75 administering these public programs. However, the public
76 availability of payment instrument transaction information would
77 reveal sensitive, personal financial information about payees
78 and conductors who use check-cashing programs, including
79 paycheck amounts, salaries, and business activities, as well as
80 information regarding the financial stability of these persons.
81 Such information is traditionally private and sensitive.
82 Protecting the confidentiality of information that would
83 identify these payees and conductors would provide adequate
84 protection for these persons while still providing public
85 oversight of the program. The public release of payment
86 instrument transaction information would also identify licensees
87 or payors and reveal private business transaction information

Page 3 of 4

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585-04493-13 20131868c1

88 that is traditionally private and could be used by competitors
89 to harm other licensees or payors in the marketplace. If such
90 information were publicly available, competitors could determine
91 the amount of business conducted by other licensees or payors.
92 Therefore, the Legislature finds that it is a public necessity
93 that information that would identify the licensee, payor, payee,
94 or conductor in payment instrument transaction information be
95 made confidential and exempt from public records requirements.
96 Section 3. This act shall take effect on the same date that
97 SB 410 or similar legislation takes effect, if such legislation
98 is adopted in the same legislative session or an extension
99 thereof and becomes a law.

Page 4 of 4

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Health Policy, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health
and Human Services
Commerce and Tourism
Communications, Energy, and Public Utilities
Governmental Oversight and Accountability

SELECT COMMITTEE:
Select Committee on Patient Protection
and Affordable Care Act

SENATOR AARON BEAN

4th District

April 17, 2013

Honorable John Thrasher
Chair, Rules Committee
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

RECEIVED

APR 17 2013

**SENATE
RULES COMMITTEE**

Dear Chairman Thrasher:

I am writing to respectfully request you consider placing CS/SB 1868 relating to Public Records Exemption for Payment Instrument Transactions on the next Rules Committee agenda.

Thank you in advance for your consideration. As always, please do not hesitate to contact me with any question or comments you, or your staff may have.

Respectfully,

A handwritten signature in cursive script that reads "Aaron Bean".

Aaron Bean
Senator, 4th District

Cc: John Phelps, Staff Director
402 SOB

REPLY TO:

- 1919 Atlantic Boulevard, Jacksonville, Florida 32207 (904) 348-5039 FAX: (888) 263-1578
- 302 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5004 FAX: (850) 410-4805

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 1000

INTRODUCER: Criminal Justice Committee and Senator Gibson

SUBJECT: Purchase of Firearms by Mentally Ill Persons

DATE: April 18, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/CS
2.	Brown	Cibula	JU	Favorable
3.	Cellon	Phelps	RC	Favorable
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 1000 amends the definition of “committed to a mental institution” in s. 790.065, F.S., to include persons found by an examining physician and a court to qualify for involuntary treatment but who decide to voluntarily admit him or herself for inpatient or outpatient treatment.

The court’s order finding that the voluntary patient meets the criteria for involuntary placement (because the patient presents an imminent danger to him or herself or others) will be added to the state and national databases used in background checks for firearm purchases. The patient’s license to carry a concealed weapon in Florida will be withheld, suspended, or revoked.

Current law allows a person who is adjudicated as mentally defective to petition the court to have the firearm restrictions removed. The court must find that the person is not likely to act in a manner that is dangerous to public safety and that granting the relief is not contrary to the public interest.¹ The bill authorizes persons who are voluntarily admitted for treatment to seek removal of the firearm restrictions in the same manner.

¹ Section 790.065(2)(a)4.d., F.S.

This bill substantially amends section 790.065, Florida Statutes.

II. Present Situation:

Florida Firearms Law

In accordance with the federal Brady Handgun Violence Prevention Act,² Florida law requires federal firearms licensees (FFLs)³ to request background checks on individuals attempting to purchase a firearm.

Created in 1989, the Firearms Purchase Program (FPP) operates 7 days a week, 363 days a year and is designed to provide FFLs with immediate responses to background check inquiries.⁴ Pursuant to s. 790.065, F.S., FFLs must contact the FPP using a toll-free number to request a criminal history check on potential purchasers prior to selling or transferring a firearm. Upon receiving requests, the FPP immediately reviews the potential purchaser's criminal history record to determine whether the sale or transfer of a firearm will violate federal or state law and provides a response to the FFL.⁵

Section 790.065, F.S., prohibits licensed importers, manufacturers, and dealers from selling or delivering firearms⁶ to those who have been "adjudicated mentally defective" or who have been "committed to a mental institution" by a court.⁷

Florida defines "adjudicated mentally defective" as:

A determination by a court that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease, is a danger to himself or herself or to others or lacks the mental capacity to contract or manage his or her own affairs. The phrase includes a judicial finding of incapacity under s. 744.331(6)(a), an acquittal by reason of insanity of a person charged with a criminal offense, and a judicial finding that a criminal defendant is not competent to stand trial.⁸

² Pub. L. No. 103-159 (1993).

³ 18 U.S.C. 923 sets forth the requirements necessary to obtain a federal firearms license. The Federal Firearms Licensing Center, a branch within the Bureau of Alcohol, Tobacco, Firearms and Explosives, is responsible for licensing firearms manufacturers, importers, collectors, and dealers, and implementing related legislation.

⁴ The Florida Senate, *Interim Project Report 2004-128, Review of FDLE Firearm Purchase Program 4* (Dec. 2003).

⁵ Jamie Y. Chandler, *Firearm Purchase Program, Can Non-approval Data be Used as a Predictor of Future Criminal Activity? A Strategic Assessment*, Florida Dept. of Law Enforcement 8 (Nov. 5, 2007).

⁶ "Firearm" is defined in s. 790.001(6), F.S., as "any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term 'firearm' does not include an antique firearm unless the antique firearm is used in the commission of a crime."

⁷ Section 790.065(2)(a)4., F.S. *see also* 18 U.S.C. § 922(d), which states that "it is unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person "has been adjudicated as a mental defective or has been committed to any mental institution."

⁸ Section 790.065(2)(a)4.a., F.S. Note that "incapacitated person" is defined as a person who has been judicially determined to lack the capacity to manage at least some of the property or to meet at least some of the essential health and safety requirements of the person. s. 744.102(12), F.S.

The term “committed to a mental institution” is defined as:

Involuntary commitment, commitment for mental defectiveness or mental illness, and commitment for substance abuse. The phrase includes involuntary inpatient placement as defined in s. 394.467, involuntary outpatient placement as defined in s. 394.4655, involuntary assessment and stabilization under s. 397.6818, and involuntary substance abuse treatment under s. 397.6957, but does not include a person in a mental institution for observation or discharged from a mental institution based upon the initial review by the physician or a voluntary admission to a mental institution.⁹

To help ensure that the above-described persons are not able to purchase a firearm, the Florida Department of Law Enforcement (FDLE) created the Mental Competency (MECOM) database. Codified in s. 790.065(2)(a), F.S., the MECOM database is an automated database of persons who are prohibited from purchasing a firearm based on court records of adjudications of mental defectiveness or commitments to mental institutions. According to FDLE, there are currently more than 120,000 mental health orders relating to nearly 87,000 persons in the MECOM database.

The statute requires clerks of court to submit court records of adjudications of mental defectiveness and commitments to mental institutions to FDLE within one month after the adjudication or commitment.¹⁰ These records are then uploaded into the MECOM database,¹¹ and are accessed by the FPP as part of the screening of potential firearm purchasers. FDLE is authorized to disclose the data to agencies of the Federal Government and other states for use exclusively in determining the lawfulness of a firearm sale or transfer. FDLE is also authorized to disclose any collected data to the Department of Agriculture and Consumer Services for purposes of determining eligibility for issuance of a concealed weapons or concealed firearms license and for determining whether a basis exists for revoking or suspending a previously issued license.¹²

Concealed Weapons Permits

The Department of Agriculture and Consumer Services (DACS) is authorized to issue concealed weapon licenses to those applicants who qualify.¹³ Concealed weapons or concealed firearms are defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie but not a machine gun for purposes of the licensure law.¹⁴

According to the FY 2011-2012 statistics, the DACS received 151,883 new licensure applications and 66,974 requests for licensure renewal during that time period.¹⁵

⁹ Section 790.065(2)(a)4.b., F.S.

¹⁰ Section 790.065(2)(a)4.c., F.S.

¹¹ FDLE also uploads the records into the National Instant Criminal Background Check System (NICS).

¹² Section 790.065(2)(a)4.f., F.S.

¹³ Section 790.06(1), F.S.

¹⁴ *Id.*

¹⁵ Florida Dept. of Agriculture and Consumer Services, *Concealed Weapon or Firearm License Reports, Applications and Dispositions by County* (July 1, 2011 – June 30, 2012), available at http://licgweb.doacs.state.fl.us/stats/07012011_06302012_cw_annual.pdf.

To obtain a concealed weapons license, a person must complete, under oath, an application that includes:

- The name, address, place and date of birth, race, and occupation of the applicant;
- A full frontal view color photograph of the applicant which must be taken within the preceding 30 days;
- A statement that the applicant has been furnished with a copy of ch. 790, F.S., relating to weapons and firearms and is knowledgeable of its provisions;
- A warning that the application is executed under oath with penalties for falsifying or substituting false documents;
- A statement that the applicant desires a concealed weapon or firearms license as a means of lawful self-defense;
- A full set of fingerprints;
- Documented proof of completion of a firearms safety and training course; and
- A nonrefundable license fee.¹⁶

Most pertinent to this bill, the applicant must attest that he or she is in compliance with the criteria contained in subsection (2) of s. 790.06, F.S., which requires the DACS to issue the license to carry a concealed weapon, if all other requirements are met, and the applicant:

- Has not been committed for the abuse of a controlled substance or been found guilty of a crime under the provisions of ch. 893, F.S., or similar laws of any other state relating to controlled substances within a 3-year period immediately preceding the date on which the application is submitted;
- Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired. An applicant is presumed to chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired if the applicant has been committed under ch. 397, F.S., or under the provisions of former ch. 396, F.S., or has been convicted under s. 790.151, F.S., or has been deemed a habitual offender under s. 856.011(3), F.S., or has had two or more convictions under s. 316.193, F.S., or similar laws of any other state, within the 3-year period immediately preceding the date on which the application is submitted;
- Has not been adjudicated an incapacitated person under s. 744.331, F.S., or similar laws of any other state, unless 5 years have elapsed since the applicant's restoration to capacity by court order;
- Has not been committed to a mental institution under ch. 394, F.S., or similar laws of any other state, unless the applicant produces a certificate from a licensed psychiatrist that he or she has not suffered from disability for at least 5 years prior to the date of submission of the application; and
- Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.¹⁷

¹⁶ Section 790.06(2), (4), and (5), F.S.

¹⁷ Section 790.06(2), F.S.

The DACS is required to suspend or revoke a concealed weapons license if the licensee:

- Is found to be ineligible under the same criteria required for the DACS to initially issue a license;
- Is committed as a substance abuser under ch. 397, F.S., or is deemed a habitual offender under s. 856.011(3), F.S., or similar laws of any other state;
- Is adjudicated an incapacitated person under s. 744.331, F.S., or similar laws of any other state; or
- Is committed to a mental institution under ch. 394, F.S., or similar laws of any other state.¹⁸

Licensees must carry their license and valid identification any time they are in actual possession of a concealed weapon or firearm and display both documents upon demand by a law enforcement officer.¹⁹ Failure to have proper documentation and display it upon demand is a noncriminal violation, carrying a penalty of \$25.²⁰

Florida's Mental Health Act

In 1971, the Legislature passed the Florida Mental Health Act (also known as “The Baker Act”) to address mental health needs in the state.²¹ Codified in part I of ch. 394, F.S., the Baker Act provide the authority and process for the voluntary and involuntary examination of persons with evidence of a mental illness and the subsequent inpatient or outpatient placement of individuals for treatment.

Section 394.463, F.S., provides that a person may be taken to a receiving facility for an involuntary examination if there is reason to believe that the person has a mental illness and because of his or her mental illness:

- The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination, or the person is unable to determine for himself or herself whether examination is necessary; and
 - Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services; or
 - A substantial likelihood exists that without care or treatment the person will cause serious bodily harm to self or others in the near future, as evidenced by recent behavior.

A patient must be examined by a physician or clinical psychologist at a receiving facility without unnecessary delay.²² In no case may a receiving facility hold a patient for involuntary

¹⁸ Section 790.06(10), F.S.

¹⁹ Section 790.06(1), F.S.

²⁰ Section 790.06(1), F.S.

²¹ Chapter 71-131, L.O.F.

²² Section 394.463(2)(f), F.S.

examination longer than 72 hours.²³ Within the 72-hour examination period, one of the following actions must be taken, based on the individual needs of the patient:

- The patient must be released, unless he or she is charged with a crime, in which case the patient must be returned to the custody of a law enforcement officer;
- The patient must be released (unless charged with a crime) for voluntary outpatient treatment;
- The patient (unless charged with a crime) must be asked to give express and informed consent to placement as a voluntary patient, and if such consent is given, the patient must be admitted as a voluntary patient; or
- A petition for involuntary placement must be filed in the circuit court when outpatient or inpatient treatment is deemed necessary.²⁴

III. Effect of Proposed Changes:

The bill amends the definition of “committed to a mental institution” in s. 790.065(2)(a)4.b., F.S., to include persons who have had an involuntary examination under the Baker Act and who then voluntarily admit themselves for outpatient or inpatient treatment so long as all of the requirements below are satisfied:

- An examining physician finds that the person is an imminent danger to himself or herself or others;
- The examining physician certifies that if the person does not agree to voluntary treatment, a petition for involuntary outpatient or inpatient treatment will be filed under the Baker Act., or the examining physician certifies that a petition was filed and the person subsequently agreed to voluntary treatment prior to a court hearing on the petition;
- Before agreeing to voluntary treatment, the person receives written notice of that finding and certification, and written notice that as a result of such finding, he or she will be prohibited from purchasing a firearm, and will not be eligible to apply for or retain a concealed weapon or firearms license under s. 790.06, F.S., and the person acknowledges such notice in writing, in substantially the following form:

“I understand that the doctor who examined me believes I am a danger to myself or to others. I understand that if I do not agree to voluntary treatment, a petition will be filed in court to require me to receive involuntary treatment. I understand that if that petition is filed, I have the right to contest it. In the event a petition has been filed, I understand that I can subsequently agree to voluntary treatment prior to a court hearing. I understand that by agreeing to voluntary treatment in either of these situations, I may be prohibited from buying firearms and from applying for or retaining a concealed weapons or firearms license until I apply for and receive relief from that restriction under Florida law.”

²³ *Id.*

²⁴ Section 394.463(2)(i), F.S.

- A judge or a magistrate reviews the record classifying the person as an imminent danger to himself or herself or others and orders that such record be submitted to FDLE.

Within 24 hours after the person's agreement to voluntary admission, a record of the finding, certification, notice, and written acknowledgement must be filed by the administrator of the receiving or treatment facility, as defined in s. 394.455, F.S., with the clerk of the court for the county in which the involuntary examination under s. 394.463, F.S., occurred. No fee may be charged for such filing. The clerk must present the record to a judge or magistrate within 24 hours after receipt. The judge or magistrate is required to review the record *ex parte* (in private). If the judge determines that the record supports the classifying of the person as an imminent danger to himself or herself or others, the judge must order that the record be submitted to FDLE. If so ordered, the record must be submitted to FDLE within 24 hours.

The new definition of "committed to a mental institution" and the procedure created for the examining physician, receiving or treatment facility, and the court to follow will allow the court order and records to be transmitted to FDLE to be included in the MECOM and NICS databases.

Because the records are a part of the databases, the person will not be able to purchase a firearm or receive a concealed weapons permit, and if he or she possesses a concealed weapons permit, it will be suspended or revoked. The firearm and concealed weapons restrictions will remain effective until the person is ready to avail him or herself of the process under current law for having these restrictions lifted.²⁵

The bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²⁵ Section 790.065(2)(a)4.d., F.S.

B. Private Sector Impact:

A person who voluntarily commits himself or herself to a mental health facility voluntarily under pressure of involuntary commitment will lose the ability to purchase a firearm or to lawfully carry a concealed weapon. The person will have to petition the court to get firearm ownership rights restored.²⁶

C. Government Sector Impact:

The Division of Licensing of the Department of Agriculture and Consumer Services reports that this bill may result in about 25 additional administrative actions to suspend or deny concealed weapon licenses. Therefore, the bill will not result in a fiscal impact.²⁷

The Florida Department of Law Enforcement (FDLE) maintains the Mental Competency Database, used for state firearm purchase checks and shared with the FBI national criminal history database for firearm checks. The FDLE may need to enter more information into the database, but it expects a minimal fiscal impact.²⁸

To the extent that this bill increases judicial and court workload, the Office of the State Courts Administrator expects a fiscal impact from the following:

- Judges and magistrates are required to review records of persons who had an involuntary examination under the Baker Act and who have then voluntarily admitted themselves.
- Judges must then determine whether the record supports a finding that the person poses an imminent danger to himself or herself or others.
- If the judge makes this finding, the judge must order that the record be submitted to FDLE.
- Judges may also experience an increased number of petition filings for relief from firearm disabilities.

Fiscal impact, however, is indeterminate.²⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²⁶ *Id.*

²⁷ Florida Department of Agriculture and Consumer Services, April 10, 2013 (on file with the Senate Criminal Justice Committee and the Judiciary Committee).

²⁸ FDLE Bill Analysis, March 29, 2013 (on file with the Senate Criminal Justice Committee and the Judiciary Committee).

²⁹ OSCA Bill Analysis, April 9, 2013 (on file with the Senate Judiciary Committee).

VIII. Additional Information:

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

CS by Criminal Justice on April 1, 2013:

Contains none of the original bill language.

- Includes within the definition of “committed to a mental institution” in s. 790.065, F.S., persons who have undergone an involuntary examination pursuant to s. 394.463, F.S., and found by the examining physician to present an imminent danger to him or herself or others and who therefore meets the criteria for involuntary treatment; and
 - The physician certifies that a petition for involuntary treatment either was filed or would have been filed with the court but the person chose to enter treatment voluntarily; and
 - Prior to agreeing to voluntary treatment the person was given written notice of the physician’s finding and certification as well as written notice that he or she may not be able to purchase a firearm or lawfully carry a concealed weapon as a result of entering voluntary treatment; and
 - A judge or magistrate reviewed all of the documentation provided to the court and ordered that the record be sent to the Department of Law Enforcement (FDLE).
- The administrator of the receiving facility must submit the records to the clerk of court within 24 hours of the person agreeing to voluntary admission to treatment.
- The clerk must submit the records to the judge or magistrate within 24 hours of receiving the records.
- If the judge or magistrate enters the order that the records should be submitted to FDLE that submission must occur within 24 hours of the order.
- Clerks of court are required to submit the records to FDLE pursuant to the court’s order.

- B. **Amendments:**

None.

By the Committee on Criminal Justice; and Senator Gibson

591-03343-13

20131000c1

A bill to be entitled

An act relating to the purchase of firearms by mentally ill persons; amending s. 790.065, F.S.; providing conditions under which a person who has been voluntarily admitted to a mental institution for treatment and has undergone an involuntary examination under the Baker Act may be prohibited from purchasing a firearm; providing requirements for the examining physician; providing for judicial review of certain findings; providing specified notice requirements; providing form and contents of notice; providing requirements with respect to the filing of specified records with the court and presentation of such records to a judge or magistrate; providing lawful authority of a judge or magistrate to review specified records and order such records be submitted to the Department of Law Enforcement; providing a timeframe for submission of records to the department upon order by a judge or magistrate; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) of section 790.065, Florida Statutes, is amended to read:

790.065 Sale and delivery of firearms.—

(2) Upon receipt of a request for a criminal history record check, the Department of Law Enforcement shall, during the licensee's call or by return call, forthwith:

(a) Review any records available to determine if the

Page 1 of 7

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

591-03343-13

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potential buyer or transferee:

1. Has been convicted of a felony and is prohibited from receipt or possession of a firearm pursuant to s. 790.23;

2. Has been convicted of a misdemeanor crime of domestic violence, and therefore is prohibited from purchasing a firearm;

3. Has had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled or expunction has occurred; or

4. Has been adjudicated mentally defective or has been committed to a mental institution by a court or as provided in sub-sub-subparagraph b. (II), and as a result is prohibited by state or federal law from purchasing a firearm.

a. As used in this subparagraph, "adjudicated mentally defective" means a determination by a court that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease, is a danger to himself or herself or to others or lacks the mental capacity to contract or manage his or her own affairs. The phrase includes a judicial finding of incapacity under s. 744.331(6)(a), an acquittal by reason of insanity of a person charged with a criminal offense, and a judicial finding that a criminal defendant is not competent to stand trial.

b. As used in this subparagraph, "committed to a mental institution" means:

(I) Involuntary commitment, commitment for mental defectiveness or mental illness, and commitment for substance abuse. The phrase includes involuntary inpatient placement as

Page 2 of 7

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

591-03343-13 20131000c1

59 defined in s. 394.467, involuntary outpatient placement as
 60 defined in s. 394.4655, involuntary assessment and stabilization
 61 under s. 397.6818, and involuntary substance abuse treatment
 62 under s. 397.6957, but does not include a person in a mental
 63 institution for observation or discharged from a mental
 64 institution based upon the initial review by the physician or a
 65 voluntary admission to a mental institution; ~~or-~~

66 (II) Notwithstanding sub-sub-subparagraph (I), voluntary
 67 admission to a mental institution for outpatient or inpatient
 68 treatment of a person who had an involuntary examination under
 69 s. 394.463, where each of the following conditions have been
 70 met:

71 (A) An examining physician found that the person is an
 72 imminent danger to himself or herself or others.

73 (B) The examining physician certified that if the person
 74 did not agree to voluntary treatment, a petition for involuntary
 75 outpatient or inpatient treatment would have been filed under s.
 76 394.463(2)(i)4., or the examining physician certified that a
 77 petition was filed and the person subsequently agreed to
 78 voluntary treatment prior to a court hearing on the petition.

79 (C) Before agreeing to voluntary treatment, the person
 80 received written notice of that finding and certification, and
 81 written notice that as a result of such finding, he or she may
 82 be prohibited from purchasing a firearm, and may not be eligible
 83 to apply for or retain a concealed weapon or firearms license
 84 under s. 790.06 and the person acknowledged such notice in
 85 writing, in substantially the following form:

86
 87 "I understand that the doctor who examined me believes I am a

591-03343-13 20131000c1

88 danger to myself or to others. I understand that if I do not
 89 agree to voluntary treatment, a petition will be filed in court
 90 to require me to receive involuntary treatment. I understand
 91 that if that petition is filed, I have the right to contest it.
 92 In the event a petition has been filed, I understand that I can
 93 subsequently agree to voluntary treatment prior to a court
 94 hearing. I understand that by agreeing to voluntary treatment in
 95 either of these situations, I may be prohibited from buying
 96 firearms and from applying for or retaining a concealed weapons
 97 or firearms license until I apply for and receive relief from
 98 that restriction under Florida law."

99 (D) A judge or a magistrate has, pursuant to sub-sub-
 100 paragraph c.(II), reviewed the record of the finding,
 101 certification, notice, and written acknowledgement classifying
 102 the person as an imminent danger to himself or herself or
 103 others, and ordered that such record be submitted to the
 104 department.

105 c. In order to check for these conditions, the department
 106 shall compile and maintain an automated database of persons who
 107 are prohibited from purchasing a firearm based on court records
 108 of adjudications of mental defectiveness or commitments to
 109 mental institutions.

110 (I) Except as provided in sub-sub-subparagraph (II), clerks
 111 of court shall submit these records to the department within 1
 112 month after the rendition of the adjudication or commitment.
 113 Reports shall be submitted in an automated format. The reports
 114 must, at a minimum, include the name, along with any known alias
 115 or former name, the sex, and the date of birth of the subject.

116 (II) For persons committed to a mental institution pursuant

591-03343-13 20131000c1
 117 to sub-sub-subparagraph b.(II), within 24 hours after the
 118 person's agreement to voluntary admission, a record of the
 119 finding, certification, notice, and written acknowledgement must
 120 be filed by the administrator of the receiving or treatment
 121 facility, as defined in s. 394.455, with the clerk of the court
 122 for the county in which the involuntary examination under s.
 123 394.463 occurred. No fee shall be charged for the filing under
 124 this sub-sub-subparagraph. The clerk must present the records to
 125 a judge or magistrate within 24 hours after receipt of the
 126 records. A judge or magistrate is required and has the lawful
 127 authority to review the records ex parte and, if the judge or
 128 magistrate determines that the record supports the classifying
 129 of the person as an imminent danger to himself or herself or
 130 others, to order that the record be submitted to the department.
 131 If a judge or magistrate orders the submittal of the record to
 132 the department, the record must be submitted to the department
 133 within 24 hours.

134 d. A person who has been adjudicated mentally defective or
 135 committed to a mental institution, as those terms are defined in
 136 this paragraph, may petition the circuit court that made the
 137 adjudication or commitment, or the court that ordered that the
 138 record be submitted to the department pursuant to sub-sub-
 139 subparagraph c.(II), for relief from the firearm disabilities
 140 imposed by such adjudication or commitment. A copy of the
 141 petition shall be served on the state attorney for the county in
 142 which the person was adjudicated or committed. The state
 143 attorney may object to and present evidence relevant to the
 144 relief sought by the petition. The hearing on the petition may
 145 be open or closed as the petitioner may choose. The petitioner

591-03343-13 20131000c1
 146 may present evidence and subpoena witnesses to appear at the
 147 hearing on the petition. The petitioner may confront and cross-
 148 examine witnesses called by the state attorney. A record of the
 149 hearing shall be made by a certified court reporter or by court-
 150 approved electronic means. The court shall make written findings
 151 of fact and conclusions of law on the issues before it and issue
 152 a final order. The court shall grant the relief requested in the
 153 petition if the court finds, based on the evidence presented
 154 with respect to the petitioner's reputation, the petitioner's
 155 mental health record and, if applicable, criminal history
 156 record, the circumstances surrounding the firearm disability,
 157 and any other evidence in the record, that the petitioner will
 158 not be likely to act in a manner that is dangerous to public
 159 safety and that granting the relief would not be contrary to the
 160 public interest. If the final order denies relief, the
 161 petitioner may not petition again for relief from firearm
 162 disabilities until 1 year after the date of the final order. The
 163 petitioner may seek judicial review of a final order denying
 164 relief in the district court of appeal having jurisdiction over
 165 the court that issued the order. The review shall be conducted
 166 de novo. Relief from a firearm disability granted under this
 167 sub-subparagraph has no effect on the loss of civil rights,
 168 including firearm rights, for any reason other than the
 169 particular adjudication of mental defectiveness or commitment to
 170 a mental institution from which relief is granted.

171 e. Upon receipt of proper notice of relief from firearm
 172 disabilities granted under sub-subparagraph d., the department
 173 shall delete any mental health record of the person granted
 174 relief from the automated database of persons who are prohibited

591-03343-13

20131000c1

175 from purchasing a firearm based on court records of
176 adjudications of mental defectiveness or commitments to mental
177 institutions.

178 f. The department is authorized to disclose data ~~the~~
179 collected pursuant to this subparagraph ~~data~~ to agencies of the
180 Federal Government and other states for use exclusively in
181 determining the lawfulness of a firearm sale or transfer. The
182 department is also authorized to disclose this ~~any collected~~
183 data to the Department of Agriculture and Consumer Services for
184 purposes of determining eligibility for issuance of a concealed
185 weapons or concealed firearms license and for determining
186 whether a basis exists for revoking or suspending a previously
187 issued license pursuant to s. 790.06(10). When a potential buyer
188 or transferee appeals a nonapproval based on these records, the
189 clerks of court and mental institutions shall, upon request by
190 the department, provide information to help determine whether
191 the potential buyer or transferee is the same person as the
192 subject of the record. Photographs and any other data that could
193 confirm or negate identity must be made available to the
194 department for such purposes, notwithstanding any other
195 provision of state law to the contrary. Any such information
196 that is made confidential or exempt from disclosure by law shall
197 retain such confidential or exempt status when transferred to
198 the department.

199 Section 2. This act shall take effect July 1, 2013.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Military Affairs, Space, and Domestic Security, *Vice Chair*
Appropriations Subcommittee on Health and Human Services
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Communications, Energy, and Public Utilities
Criminal Justice
Regulated Industries

SELECT COMMITTEE:
Select Committee on Patient Protection and Affordable Care Act

SENATOR AUDREY GIBSON
9th District

April 16, 2013

Senator John Thrasher, Chair
Committee on Rules
402 Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

RECEIVED

APR 16 2013

**SENATE
RULES COMMITTEE**

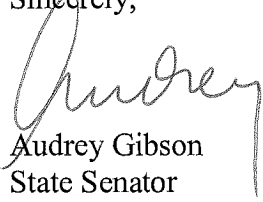
Chair Thrasher 

I respectfully request that SB 1000, relating purchase of firearms by mentally ill persons, be placed on the next committee agenda.

SB 1000, mandates that is unlawful for any person to own or posses any firearm, ammunition or electric weapon if that person is the subject of a preventative psychiatric or psychological assessment by FDLE. SB 1000 passed out of the Criminal Justice and Judiciary Committees unanimously.

Thank you for your time and consideration.

Sincerely,


Audrey Gibson
State Senator
District 9

REPLY TO:

- 101 E. Union Street, Suite 104, Jacksonville, Florida 32202 (904) 359-2553 FAX: (904) 359-2532
- 205 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5009

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

22 April 2013
Date

1000
Bill Number

Name Jill Gran (Waive time in support)
Address 28103 Mahan Dr
Street
Tallahassee FL 32308
City State Zip

Barcode
Phone 951-8988
E-mail jill@fadad.org
Job Title

Speaking: For Against Information Appearing at request of Chair

Subject Purchase of Firearms by Mentally Ill Persons

Representing Florida Alcohol & Drug Abuse Association

Lobbyist registered with Legislature: Yes No

Pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from _____ .m. to _____ .m.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/22/2013

Meeting Date

Topic _____

Bill Number 1000
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

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)

TESTIFY LAST PLEASE

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

4/22/13
Date

SB-1000
Bill Number

Name MARION HAMMER

Phone 222-9518

Address P.O. BOX 1387

E-mail _____

TALLAHASSEE FL 32302
City State Zip

Job Title _____

Speaking: For Against Information

Appearing at request of Chair

Subject _____

Representing NRA & UNIFIED SPORTSMEN OF FLORIDA

Lobbyist registered with Legislature: Yes No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.
If designated employee: Time: from _____ .m. to _____ .m.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 1318

INTRODUCER: Ethics and Elections Committee and Senator Soto

SUBJECT: Public Records/Complaint of Misconduct Against Public Employee

DATE: April 18, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Roberts	Roberts	EE	Fav/CS
2.	Naf	McVaney	GO	Favorable
3.	Roberts	Phelps	RC	Favorable
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 1318 creates a public record exemption for a complaint of misconduct filed with an agency against an agency employee and all information obtained pursuant to the investigation by the agency of the complaint of misconduct. The information is confidential and exempt from public record disclosure requirements until the investigation ceases to be active, or until the agency provides written notice to the employee who is the subject of the complaint that the agency concluded the investigation and either will or will not proceed with disciplinary action or file charges.

The bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. In addition, the bill provides a statement of public necessity as required by the State Constitution.

The bill does not appear to have a fiscal impact on state or local governments.

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting

exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

This bill substantially amends section 119.071, Florida Statutes.

II. Present Situation:

Public Record Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption to public record disclosure requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

⁴ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁵ Section 119.07(1)(a), F.S.

⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

The Open Government Sunset Review Act¹⁰ requires a newly created or expanded public record exemption to be repealed on October 2 of the fifth year after enactment, unless reviewed and reenacted by the Legislature.¹¹ It further provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet the public purpose it serves.¹²

Public Record Exemptions Relating to Complaints of Misconduct and Investigations

State law provides limited exemptions from public record disclosure requirements for information relating to complaints of misconduct and investigations carried out by agencies in certain contexts. For example, a complaint filed against a law enforcement officer and all information obtained pursuant to the investigation of the complaint by the agency is confidential and exempt from s. 119.07(1), F.S., until the investigation ceases to be active or until the agency head or designee informs the subject of the complaint that the agency will or will not proceed with disciplinary action or the filing of charges.¹³ Similarly, a complaint filed against an individual certified by the Department of Education, and all information obtained pursuant to the investigation of the complaint by the agency, is confidential and exempt from s. 119.07(1), F.S., until the conclusion of the preliminary investigation of the complaint, until such time as the preliminary investigation ceases to be active, or until such time as otherwise provided by s. 1012.798(6), F.S.¹⁴ However, there is no general exemption for information obtained pursuant to an investigation following a complaint of misconduct filed against a public employee.

III. Effect of Proposed Changes:

This bill creates a public record exemption for certain information pertaining to a complaint of misconduct filed against an agency employee. Specifically, the complaint and all information obtained pursuant to the investigation of the complaint by the agency¹⁵ are confidential and exempt¹⁶ from public record disclosure requirements until the:

- Investigation ceases to be active;

¹⁰ Section 119.15, F.S.

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(5)(b), F.S.

¹³ Section 112.533(2), F.S.

¹⁴ Section 1012.796(4), F.S. Section 1012.798(6), F.S. does not provide any additional limit on the duration of the exemption.

¹⁵ Section 119.011(2), F.S., defines the term “agency” to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of chapter 119, F.S., the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

¹⁶ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. See Attorney General Opinion 85-62 (August 1, 1985).

- Agency provides written notice to the employee who is the subject of the complaint that the agency concluded the investigation with a finding not to proceed with disciplinary action or file charges; or
- Agency provides written notice to the employee who is the subject of the complaint that the agency concluded the investigation with a finding to proceed with disciplinary action or file charges.

The bill provides that the exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2018, unless reviewed and reenacted by the Legislature.

In addition, the bill provides a statement of public necessity as required by the State Constitution.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

Vote Requirement

Section 24(c), Art. I of the State Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for passage of a newly created public record exemption. Because this bill creates a new public record exemption, it requires a two-thirds vote for passage.

Public Necessity Statement

Section 24(c), Art. I of the State Constitution requires a public necessity statement for a newly created public record exemption. Because this bill creates a new public record exemption, it includes a public necessity statement.

Single Subject

Article I, s. 24(c) of the State Constitution requires a newly created public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption of limited duration for a complaint of misconduct filed with a state agency or political subdivision of the state against an agency employee, and all information obtained pursuant to the investigation of the complaint by the agency. The purpose of the exemption is to facilitate the investigation of such complaints, and the exemption does not extend past the duration of such an investigation. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill could create a minimal fiscal impact on agencies because staff responsible for complying with public record requests could require training related to the expansion of the public records exemption. In addition, those agencies could incur costs associated with redacting confidential and exempt information prior to releasing a record. Such costs would be absorbed, however, as they are part of the day-to-day responsibilities of the agencies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

CS by Ethics and Elections on April 1, 2013:

The CS differs from the original bill in that it:

- Replaces the term “state agency or political subdivision of the state” with the term “agency” to simplify the exemption and ensure consistency with other public records exemptions created in chapter 119, F.S.; and
- Corrects a technical deficiency with the date for the automatic repeal of the exemption under the Open Government Sunset Review Act to read “October 2, 2018,” instead of “July 1, 2018.”

B. Amendments:

None.

By the Committee on Ethics and Elections; and Senator Soto

582-03327-13

20131318c1

A bill to be entitled

An act relating to public records; amending s.

119.071, F.S.; providing an exemption from public record requirements for a complaint of misconduct

filed with an agency against an agency employee and

all information obtained pursuant to an investigation

of the complaint by the agency; providing for limited

duration of the exemption; providing for future review

and repeal of the exemption under the Open Government

Sunset Review Act; providing a statement of public

necessity; providing an effective date.

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

Section 1. Paragraph (k) is added to subsection (2) of section 119.071, Florida Statutes, to read:

119.071 General exemptions from inspection or copying of public records.—

(2) AGENCY INVESTIGATIONS.—

(k)1. A complaint of misconduct filed with an agency against an agency employee and all information obtained pursuant to an investigation by the agency of the complaint of misconduct is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation ceases to be active, or until the agency provides written notice to the employee who is the subject of the complaint, either personally or by mail, that the agency has either:

a. Concluded the investigation with a finding not to proceed with disciplinary action or file charges; or

Page 1 of 3

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

582-03327-13

20131318c1

b. Concluded the investigation with a finding to proceed with disciplinary action or file charges.

2. Subparagraph 1. is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that a complaint of misconduct filed with an agency against an agency employee and all information obtained pursuant to an investigation by the agency of the complaint of misconduct be made confidential and exempt from the requirements of s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The disclosure of information, such as the nature of the complaint against an agency employee and testimony and evidence given in the investigation of the complaint, could injure an individual and deter that person from providing information pertaining to internal investigations, thus impairing the ability of an agency to conduct an investigation that is fair and reasonable. In the performance of its lawful duties and responsibilities, an agency may need to obtain information for the purpose of determining an administrative action. Without an exemption from public record requirements to protect information of a sensitive personal nature provided to an agency in the course of an internal investigation, such information becomes a public record when received and must be divulged upon request. Disclosure of information obtained during an internal investigation conducted by an agency inhibits voluntary participation of individuals during internal investigations and makes it difficult if not impossible to

Page 2 of 3

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582-03327-13

20131318c1

59 determine the truth. Therefore, the Legislature declares that it
60 is a public necessity that a complaint of misconduct filed with
61 an agency against an agency employee and all information
62 obtained pursuant to an investigation by the agency of the
63 complaint of misconduct be held confidential and exempt from
64 public record requirements.

65 Section 3. This act shall take effect July 1, 2013.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-22-13

Meeting Date

Topic Public Records/Internal Investigations Bill Number SB 1318
(if applicable)

Name John Wayne Smith Amendment Barcode _____
(if applicable)

Job Title Consultant

Address 310 W. College Ave Phone 681-7383
Street

Tan FL 32301 E-mail john@billpeekles.com
City State Zip

Speaking: For Against Information Waive in support

Representing City of Kissimmee

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
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 1680

INTRODUCER: Senator Altman

SUBJECT: Public Records and Public Meetings/State Child Abuse Death Review Committee or
Local Committee

DATE: April 18, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	Favorable
2.	<u>Naf</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	<u>Preston</u>	<u>Phelps</u>	<u>RC</u>	Favorable
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 1680 amends a public record and meeting exemption for certain information held by or discussed by the State Child Abuse Death Review Committee (CADR) or local child abuse death review committees within the Department of Health.

Current law provides a public record exemption for any information that reveals the identity of the surviving siblings, family members, or others living in the home of a deceased child who is the subject of review by and which information is held by the CADR or a local committee. It also provides that portions of meetings of the CADR or a local committee at which confidential or exempt information is discussed are exempt from public meeting requirements.

This bill removes a current requirement that closed portions of meetings of the CADR or local committees be recorded, as well as a requirement that no portion of a closed meeting be off the record. The bill also removes a requirement that the CADR or local committee maintain the recording of the closed portion of the meeting.

This bill substantially amends section 383.412 of the Florida Statutes.

II. Present Situation:

Public Records and Meetings

State Constitution

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public.

The Legislature, however, may provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24(a) and (b) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

Florida Statutes: Public Records Law

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record.

Florida Statutes: Public Meetings Law

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken be open to the public at all times.² The board or commission must provide reasonable notice of all public meetings.³ Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public's access to the facility.⁴ Minutes of a public meeting must be promptly recorded and be open to public inspection.⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act⁶ provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.

¹ Section 24(c), Art. I of the State Constitution

² Section 286.011(1), F.S.

³ *Id.*

⁴ Section 286.011(6), F.S.

⁵ Section 286.011(2), F.S.

⁶ *See* s. 119.15, F.S.

- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

Child Abuse Death Review Committee

Current law establishes the State Child Abuse Death Review Committee (CADR) and local child abuse death review committees within the Department of Health (DOH).⁷ The purpose of the CADR is prevention of child deaths as a result of abuse or neglect.

The CADR is tasked with reviewing the facts and circumstances of the deaths of children whose deaths have been investigated by the Department of Children and Families and closed with a "verified" finding of child abuse or neglect. The purpose of the child death review is to:⁸

- Develop a community based approach to address child abuse deaths and contributing factors;
- Achieve a greater understanding of the causes and contributing factors of deaths resulting from child abuse or neglect;
- Identify gaps, deficiencies or problems in service delivery to children and families by public and private agencies that may be related to child abuse deaths; and
- Develop and implement data-driven recommendations for reducing child abuse and neglect deaths.

The state committee must prepare an annual statistical report to be presented to the Governor and the Legislature containing recommendations to reduce preventable child deaths.⁹ The CADR is composed of 18 members, including experts from the medical, law enforcement, social services, and advocacy professions who convene every other month to examine the circumstances leading to child deaths.¹⁰

Local child abuse death review committees also conduct reviews of the verified deaths of children in their respective communities to develop prevention campaigns and prepare recommendations for improving local practices in child protection and support services to families. There are 23 local committees that provide coverage for Florida's 67 counties.¹¹

Public Record and Public Meeting Exemptions for CADR

Current law provides a public record exemption for any information that reveals the identity of the surviving siblings, family members, or others living in the home of a deceased child who is the subject of review by and which information is held by the CADR or a local committee.¹² It

⁷ Section 383.402(1), F.S.

⁸ *Id.*

⁹ Section 383.402(3)(c), F.S.

¹⁰ Section 383.402(2)(a) and (b), F.S.

¹¹ Child Abuse Death Review Committee, Annual Report (Dec. 2012), available at www.flcadr.org/reports.html (last visited April 2, 2013).

¹² Section 383.412(2)(a), F.S.

also provides that portions of meetings of the CADR or a local committee at which confidential or exempt information is discussed are exempt from public meeting requirements.¹³

In 2010, the law was amended to require that the closed portion of a meeting of the CADR or local committee be recorded. In addition, a public record exemption was created to protect the release of such recording. No portion of the meeting may be off the record, and the recording must be maintained by the CADR or local committee.¹⁴

The CADR has indicated that the recording requirement has had a negative impact on both the state and local committees, because the members need to be able to speak candidly about the individual cases in order to make prevention recommendations.¹⁵ The recording requirement has impacted local committees in some areas due to the reluctance of some law enforcement, state attorney offices and other agencies to openly discuss confidential information that is being recorded.¹⁶

III. Effect of Proposed Changes:

The bill removes the requirement that closed portions of meetings of the CADR or local committees be recorded, as well as the requirement that no portion of a closed meeting be off the record. The bill also removes the requirement that the CADR or local committee must maintain the recording of the closed portion of the meeting.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill revises a record requirement related to closed portions of meetings held by the CADR or local child abuse death review committees. It does not expand a public record or meeting exemption.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹³ Section 383.412(3)(a), F.S.

¹⁴ Chapter 2010-40, L.O.F.

¹⁵ E-mail from Special Agent Terry Thomas, Chairperson, State Child Abuse Death Review Committee (Apr.3, 2013) (on file with the Committee on Children, Families and Elder Affairs).

¹⁶ *Id.*

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Lines 32-35 of the bill remove the requirement for the CADR or the local committee to record closed portions of meetings and to maintain such recording. If a recording is not being made and maintained, then the public record exemption for such recording on lines 36-38 of the bill would appear to be unnecessary. If the public record exemption is repealed, any recordings in existence prior to the repeal would retain their protection.¹⁷ However, if the CADR or local committee later chose to record its meetings, such recordings would not be protected.

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

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

None.

B. Amendments:

None.

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

¹⁷ See *Baker v. Eckerd Corporation*, 697 So.2d 970 (Fla. 2d DCA 1997) (an amendment eliminating protection against disclosure of any unfounded reports of child abuse applies prospectively from the date of the amendment) and Attorney General Opinion 95-19 (expanded disclosure provisions for juvenile records apply only to record created after the effective date of the amendment).

By Senator Altman

16-00944-13

20131680__

A bill to be entitled

An act relating to public records and public meetings exemptions; amending s. 383.412, F.S.; eliminating requirements that the closed portion of a meeting of the State Child Abuse Death Review Committee or a local committee at which specified identifying information is discussed be recorded, that no portion of such closed meeting be off the record, and that the recording be maintained by the state committee or a local committee; providing an effective date.

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

Section 1. Subsection (2) of section 383.412, Florida Statutes, is reenacted and subsection (3) of that section is amended to read:

383.412 Public records and public meetings exemptions.—

(2) (a) Any information that reveals the identity of the surviving siblings, family members, or others living in the home of a deceased child who is the subject of review by and which information is held by the State Child Abuse Death Review Committee or a local committee is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Information made confidential or exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution that is obtained by the State Child Abuse Death Review Committee or a local committee shall retain its confidential or exempt status.

(3) (a) Portions of meetings of the State Child Abuse Death Review Committee or a local committee at which information made

Page 1 of 2

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16-00944-13

20131680__

confidential and exempt pursuant to subsection (2) is discussed are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. ~~The closed portion of a meeting must be recorded, and no portion of the closed meeting may be off the record. The recording shall be maintained by the State Child Abuse Death Review Committee or a local committee.~~

(b) A ~~The~~ recording of a closed portion of a meeting is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

Section 2. This act shall take effect July 1, 2013.

Page 2 of 2

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Military Affairs, Space, and Domestic Security, *Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on Finance and Tax
Children, Families, and Elder Affairs
Criminal Justice
Environmental Preservation and Conservation

JOINT COMMITTEE:

Joint Administrative Procedures Committee

SENATOR THAD ALTMAN

16th District

April 16, 2013

The Honorable John Thrasher
Senate Committee on Rules, Chair
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Thrasher:

I respectfully request that SB 1680, related to *Public Records and Public Meetings/State Child Abuse Death Review Committee or Local Committee*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Thad Altman".

Thad Altman
TA/rk

CC: John B. Phelps, Staff Director, 402 Senate Office Building

REPLY TO:

- 6767 North Wickham Road, Suite 211, Melbourne, Florida 32940 (321) 752-3138
- 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/22/13

Meeting Date

Topic Greg Pound Public Records

Bill Number SB 1680
(if applicable)

Name Greg Pound

Amendment Barcode _____
(if applicable)

Job Title _____

Address 9166 Sunrise Dr.
Street

Phone _____

Largo Fla. 33273
City State Zip

E-mail _____

Speaking: For Against Information

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)

4/22/2013

Meeting Date

Topic _____

Bill Number 1680
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

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
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 626
INTRODUCER: Education Committee and Senator Bullard
SUBJECT: Bullying in the Public School System
DATE: April 18, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hand	Klebacha	ED	Fav/CS
2.	Brown	Cibula	JU	Favorable
3.	Hand	Phelps	RC	Favorable
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 626 broadens the authority of a public K-12 school to discipline students for cyberbullying activities. Under existing law, a school may discipline a student for cyberbullying if the student uses a school computer, computer system, or computer network. Under the bill, a school may discipline a student for cyberbullying activities through the use of any computer located:

- On school grounds;
- At the site of a school-related or sponsored program or activity; or
- On a school bus.

The bill further provides that bullying or cyberbullying is prohibited if it is reasonably foreseeable that it could materially and substantially interfere with school operation, an educational program, or a school-related function, including field trips, or a student’s safety and security.

Additionally, the bill defines and redefines several terms. The term “bullying” is redefined to include conduct that involves emotional pain and discomfort. The bill defines “cyberbullying” as

bullying or harassment through the use of computers, technology, or electronic communication. The definition of “harassment” is expanded to include conduct that has no legitimate purpose and which causes substantial emotional distress to a student or school employee.

By October 1, 2013, the Department of Education (DOE) is required to incorporate cyberbullying into its existing anti-bullying model policy.

The bill requires school districts to incorporate the DOE’s provisions on cyberbullying from its model policy into the district’s anti-bullying policy by December 1, 2013. Distribution of safe school funds provided in the 2014-2015 General Appropriations Act is contingent upon DOE approval of a district’s bullying, cyberbullying, and harassment policy.

This bill substantially amends section 1006.147, Florida Statutes.

II. Present Situation:

School Districts Regulating Student Speech

Courts have long established the axiom that students do not leave their constitutional rights to freedom of speech and expression at the schoolhouse gate.¹ Still, First Amendment rights of students are not coextensive to that of adults. The watershed case in this area, *Tinker v. Des Moines Independent Community School District*, involved a group of students who intended to protest the Vietnam War by wearing black armbands to class. Hearing of the plan, school administrators quickly adopted a policy to prevent the students from wearing the armbands on school grounds.² Subsequently, students who wore armbands were suspended pursuant to school policy, and affected students and parent filed legal action against the school district.³ The case ultimately ended up in the U.S. Supreme Court. Pointing out that the wearing of the armbands constituted silent, passive expression; the Court noted that “this case does not concern speech or action that intrudes upon the work of the schools or the rights of other students.”⁴

[C]onduct by the student, in class or out of it, which for any reason - whether it stems from time, place, or type of behavior – materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guarantee of freedom of speech.⁵

In upholding the right of the students to wear the armbands to school, the Court established the threshold test of constitutionality in expression cases in the school

¹ *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 506 (1969).

² *Id.* at 504. The policy provided for teachers or administrators to ask a student wearing a black armband to remove it. If the student refused, he or she would be suspended.

³ *Id.*

⁴ *Id.* at 508.

⁵ *Id.* at 512-513. The Court also held that in order for “school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.” *Id.* at 509. The Court also stated that “[t]he principal use to which the schools are dedicated is to accommodate students during prescribed hours for the purpose of certain types of activities. Among those activities is the personal intercommunication among the students. This is not only an inevitable part of the process of attending schools; it is also an important part of the educational process. *Id.* at 512.

environment. For a school to infringe the First Amendment rights of students, the student's activities must "materially and substantially disrupt the work and discipline of the school."⁶

Subsequent courts have handily applied the *Tinker* standard to cases involving First Amendment rights of students to the school ground context. Less certain, however, is the extent to which laws and courts can sanction the behavior of a student off campus, when the impact of the behavior spreads into the school or the classroom. Still, some courts have relied on *Tinker* as precedent in First Amendment challenges in cyberbullying cases.

By way of example, in 2008 the Third Circuit Court of Appeal reviewed a case in which a student created a fake webpage of a school principal on the popular social networking site MySpace.⁷ The website made various disparaging attacks on the principal. The principal suspended the student for 10 days, placed him in alternative education for the remainder of the school year, and prohibited the student from participating in extracurricular activities and the school graduation ceremony.⁸ In applying *Tinker*, the Court upheld the district court's finding that the school district failed to establish a sufficient nexus between the student's speech and a substantial disruption of the school environment.⁹

Other courts have ruled differently on the application of *Tinker* and the greater question of whether First Amendment rights apply to online student speech.¹⁰ The Second Circuit Court of Appeals reviewed a challenge involving a sanction against a student for posting a blog off-campus about a school event.¹¹ The post contained vulgar and misleading language directed at school administrators. Although the court mentioned *Tinker*, it applied the holding in *Fraser*.¹² In *Fraser*, the court did not require proof of a substantial disruption, just that the speech is lewd or vulgar enough to rise to the level of impeding a school's mission in furthering civility amongst its student population.¹³

Therefore, the federal courts have not reached consensus on how to address the rights and responsibilities of individuals and public school settings with the advent of online student speech.¹⁴ In 2011 alone, the U.S. Supreme Court received writs for certiorari from four

⁶ *Id.* at 513.

⁷ *Layshock v. Hermitage School District*, 650 F.3d 205, 208-209 (3d Cir. 2011).

⁸ *Id.* at 210.

⁹ *Id.* at 216.

¹⁰ In the context of challenges of student speech in the social media age, "the circuit courts have reached inconsistent holdings, and some of those results deviate from the core First Amendment principles that the Court articulated in *Tinker*." Aaron J. Hersh, *Rehabilitating Tinker: A Modest Proposal to Protect Public-school Students' First Amendment Free Expression Rights in the Digital Age*, 98 Iowa L. Rev. 1309, 1312 (March 2013).

¹¹ *Doninger v. Niehoff*, 527 F. 3d 41, 43 (2d Cir. 2008).

¹² *Id.* at 49. *Bethel School District No. 403 v. Fraser*, 478 U.S. 675, 683 (1986).

¹³ *Fraser*, 478 U.S., at 683. "The process of educating our youth for citizenship in public schools is not confined to books, the curriculum, and the civics class; schools must teach by example the shared values of a civilized social order."

¹⁴ See Maryclaire Dale, *Online Student Speech Appeals Rejected by Supreme Court*, Huffington Post, January 17, 2012, at http://www.huffingtonpost.com/2012/01/17/court-rejects-appeals-in-0_n_1210399.html (last visited on Apr. 11, 2012). See e.g., *Wilson v. Lee's Summit R-7 Sch. Dist.*, 696 F. 3d 771 (8th Cir. 2012); *Kowalski v. Berkley Cnty. Schs.*, 652F.3d 565 (4th Cir. 2011); and *Doniger v. Niehoff*, 642 F. 3d 334 (2nd Cir. 2011).

student-speech cases, from various circuit courts of appeal. The Court denied certiorari in each of the cases.¹⁵

Bullying and Harassment

The 2008, Florida Legislature enacted s. 1006.147, F.S., which prohibits bullying and harassment in the school environment.¹⁶

Bullying means systemically and chronically inflicting physical hurt or psychological distress on one or more students and may involve:

- Teasing;
- Social exclusion;
- Threat;
- Intimidation;
- Stalking;
- Physical violence;
- Theft;
- Sexual, religious, or racial harassment;
- Public humiliation; or
- Destruction of property.¹⁷

Harassment is defined as any threatening, insulting, or dehumanizing gesture, use of data or computer software, or written, verbal or physical conduct directed against a student or school employee that:

- Places a student or school employee in reasonable fear of harm to his or her person or damage to his or her property;
- Has the effect of substantially interfering with a student's educational performance, opportunities, or benefits; or
- Has the effect of substantially disrupting the orderly operation of a school.¹⁸

Bullying and harassment includes:

- Retaliation against a student or school employee by another student or school employee for asserting or alleging an act of bullying or harassment; and
- Perpetuation of bullying or harassment by an individual or group with intent to demean, dehumanize, embarrass, or cause physical harm to a student or school employee by incitement or coercion, accessing or knowingly causing or providing access to data or computer software through a computer, computer system, or computer network within the

¹⁵ Rory Allen Weeks, *The First Amendment, Public School Students, and the Need for Clear Limits on School Officials' Authority over Off-campus Student Speech*, 46 Ga. L. Rev. 1157, 1163(Summer 2012).

¹⁶ Chapter 2008-123, L.O.F., provides the Jeffrey Johnston Stand Up for All Students Act.

¹⁷ Section 1006.147(3)(a), F.S.

¹⁸ Section 1006.147(3)(b), F.S.

scope of the district school system, or acting in a manner that has an effect substantially similar to the effect of bullying or harassment.

Bullying or harassment of any student or employee of a public K-12 educational institution is specifically prohibited:

- During education programs and activities;
- During school-related and school-sponsored activities, including on a school bus; and
- Through the use of data or computer software that is accessed through a computer, computer system, or computer network of a public K-12 institution.¹⁹

School districts are required to have a policy that prohibits bullying and harassment of students and employees of public K-12 educational institutions, and that is integrated with a school's curriculum, discipline policies, and other violence prevention efforts.²⁰

Cyberbullying

Section 1006.147, F.S., does not define or specifically prohibit cyberbullying, except to:

- Prohibit bullying or harassment of any student or employee of a public K-12 educational institution through the use of data or computer software that is accessed through a computer, computer system, or computer network of a public K-12 educational institution;²¹ and
- Include as bullying the perpetuation of specific behaviors that includes teasing, social exclusion, and threats by an individual or group with intent to demean, dehumanize, embarrass, or cause physical harm to a student or school employee by accessing or knowingly causing or providing access to data or computer software through a computer, computer system, or computer network within the scope of the district school system.²²

In a 2010 random sample of 4,400 students, from ages 11 through 18:

- Approximately 20 percent said they had been a victim of cyberbullying;
- Approximately 20 percent said they had committed cyberbullying; and
- About 10 percent indicated that they had been both victim and offender.²³

Subsequently, in a 2012 random sample of 4,441 students in grades 9-12, students who reported that many of their friends had bullied others (at school, using a computer, and using a cell phone) were significantly more likely to also report that they too had cyberbullied others.²⁴

¹⁹ Section 1006.147(2), F.S.

²⁰ Section 1006.147(4), F.S.

²¹ Section 1006.147(2)(c), F.S.

²² Section 1006.147(3)(d)2.b., F.S.

²³ Sameer Hinduja, PhD and Justin W. Patchin, PhD, *Cyberbullying: Identification, Prevention, and Response* (2010) at http://www.cyberbullying.us/Cyberbullying_Identification_Prevention_Response_Fact_Sheet.pdf . (last visited on Apr. 11, 2013).

²⁴ Sameer Hinduja, PhD and Justin W. Patchin, PhD, *Cyberbullying Research Summary: The Influence of Parent, Educators, and Peers* (January 2013) at: http://cyberbullying.us/Social_Influences_on_Cyberbullying.pdf (last visited on Apr. 11, 2013).

Research also revealed a link between cyberbullying and low self-esteem, family problems, academic problems, school violence and delinquent behavior.²⁵ Forty-nine states have adopted anti-bullying legislation, with 16 of these states specifically including anti-cyberbullying legislation.²⁶

III. Effect of Proposed Changes:

This bill broadens the authority of a public K-12 school to discipline students for cyberbullying activities. Under existing law, a school may discipline a student for cyberbullying if the student uses a school computer, computer system, or computer network. Under the bill, a school may discipline a student for cyberbullying activities through the use of any computer located:

- On school grounds;
- At the site of a school-related or sponsored program or activity; or
- On a school bus.

The bill further provides that bullying or cyberbullying is prohibited if it is reasonably foreseeable that it could materially and substantially interfere with school operation, an educational program, or a school-related function, including field trips, or a student's safety and security.

Additionally, the bill defines and redefines several terms. The term "bullying" is redefined to include conduct that involves emotional pain and discomfort. The current definition of bullying mainly focuses on a person's acts toward another person. This revised definition allows conduct to be defined as bullying by its effect on another person.

The bill defines "cyberbullying" as bullying or harassment through the use of computers, technology, or electronic communication, including transfer of signs, signals, writing, images, sounds, data, or other intelligence transmitted through email, text, instant messaging, social media, the Internet, or fax.

Examples of cyberbullying include:

- Harassment and cyberstalking;
- Creating a web page in which the creator assumes a false identity, or knowingly impersonates another person.
- Electronically sharing or distributing material and communications to more than one person or posting material accessible by others.

The definition of harassment is expanded to include conduct that has no legitimate purpose and which causes substantial emotional distress to a student or school employee.

²⁵ Sameer Hinduja, PhD and Justin W. Patchin, PhD, at note 16.

²⁶ Sameer Hinduja, PhD and Justin W. Patchin, PhD, *State Cyberbullying Laws: A Brief Review of State Cyberbullying Laws and Policies* (January 2013) at http://cyberbullying.us/Bullying_and_Cyberbullying_Laws.pdf (last visited on Apr. 11, 2013).

The bill directs schools to use computers with disabled, or without web-filtering software to investigate alleged cyberbullying.

By October 1, 2013, the Department of Education (DOE) is required to incorporate cyberbullying into its existing anti-bullying model policy.

The bill requires school districts to incorporate the DOE's provisions on cyberbullying from its model policy into the district's anti-bullying policy by December 1, 2013.

The bill takes effect July 1, 2013. Consideration of DOE approval of a district's safe school policy that includes cyberbullying takes effect with funds provided in the 2014-2015 General Appropriations Act.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Education (DOE) reports that the requirement to investigate cyberbullying through the use of computers that are not web-disabled may result in a fiscal impact for school districts.²⁷ Some districts may need to purchase new software, or new computers altogether. The cost is indeterminate.

According to a representative of the Panhandle Area Educational Consortium (PAEC):

²⁷ DOE 2013 Agency Legislative Bill Analysis, SB 626 (March 7, 2013) (on file with the Senate Judiciary Committee).

- To the extent that this bill creates an affirmative obligation on the school or district to act, this bill may result in increased litigation in instances where a school imposes sanctions against a student, or, in its discretion, does not sanction a student for alleged cyberbullying. For this reason, the PAEC suggested that an immunity clause be included in the bill.
- The bill appears to create a new standard for these types of cases, the “student’s ability to be safe and secure during school.” This language is different from that upheld in the *Tinker* case, which may also result in increased litigation.
- To the extent that schools are subject to increased vigilance under this bill, greater investigation of off-campus activity will be required.²⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Committee on Education on March 12, 2013:

The committee substitute:

- Names the act the “Imagine Sheterrria Elliot Act;”
- Establishes cyberbullying as a stand-alone prohibited action;
- Prohibits bullying, cyberbullying, and harassment through the use of data or computer software that is accessed through a computer, computer system, or computer network which is on a public school bus;
- Codifies recent court decisions use of the *Tinker* test in the context of prohibiting bullying, cyberbullying, and harassment off school property;
- Clarifies the definition of bullying by including school employees;
- Clarifies the definition of cyberbullying by specifically including text messages and social media, and incorporating the definitions of harassment and cyberstalking in s 784.048, F.S.;
- Clarifies the definition of harassment by incorporating the definition of harassment in s. 784.048(1)(a), F.S., and by incorporating the *Tinker* test;
- Requires the Department of Education to incorporate cyberbullying into its model policy on bullying and harassment. The model policy must include factors a school district must consider when responding to an incident of bullying, cyberbullying, or harassment which occurs off school grounds, and must provide clear notice to a student and parent that the district will discipline a person who violates this section;

²⁸ Email from Bob Harris, Panhandle Educational Educational Consortium (April 11, 2013) (on file with the Senate Judiciary Committee).

- Requires a school district to incorporate cyberbullying into its policy on bullying and harassment; and
- Makes distribution of safe school funds to a school district provided in the 2014-2015 General Appropriations Act contingent and payable to the school district upon the Department of Education's approval of the school district's bullying, cyberbullying, and harassment policy.

B. Amendments:

None.

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

By the Committee on Education; and Senator Bullard

581-02285-13

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A bill to be entitled

An act relating to bullying in the public school system; providing a short title; amending s. 1006.147, F.S.; prohibiting cyberbullying in schools and during school-related activities; expanding the circumstances under which bullying or harassment of any student or employee of a public K-12 institution is prohibited; revising the definition of the term "bullying" to include emotional pain or discomfort; defining the term "cyberbullying"; revising the definition of the term "harassment"; requiring each school district to incorporate a prohibition on cyberbullying into its policy on bullying and harassment; requiring that such policy mandate that computers without web-filtering software or computers with web-filtering software disabled be used when investigating complaints of cyberbullying; requiring that school district policies prohibiting bullying, cyberbullying, and harassment address how to identify and respond to behavior that leads to such conduct; requiring that the model policy of the Department of Education include a prohibition on cyberbullying by a certain date and that such policy be included in the code of student conduct; updating fiscal years regarding the distribution of safe school funds; providing an effective date.

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

Section 1. SHORT TITLE.—This act may be cited as the

Page 1 of 10

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581-02285-13

2013626c1

"Imagine Shetterria Elliot Act."

Section 2. Section 1006.147, Florida Statutes, is amended to read:

1006.147 Bullying and harassment prohibited.—

(1) This section may be cited as the "Jeffrey Johnston Stand Up for All Students Act."

(2) Bullying, cyberbullying, or harassment of any student or employee of a public K-12 educational institution is prohibited:

(a) During any education program or activity conducted by a public K-12 educational institution;

(b) During any school-related or school-sponsored program or activity or on a school bus of a public K-12 educational institution; ~~or~~

(c) Through the use of data or computer software that is accessed through a computer, computer system, or computer network of a public K-12 educational institution which is physically located on the property of the educational institution, at the site of any school-related or school-sponsored program or activity conducted by the educational institution, or on a school bus of a public K-12 educational institution; or

(d) If the bullying, cyberbullying, or harassment creates, or if it is reasonably foreseeable that it could create, material and substantial interference with or disruption of:

1. The operation of a school, an education program or activity conducted by a public K-12 educational institution, or a school-related or school-sponsored program or activity, including, but not limited to, field trips, extracurricular

Page 2 of 10

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581-02285-13

2013626c1

59 activities, or transit on a school bus of a public K-12
 60 educational institution for any of the actions under this
 61 subparagraph; or

62 2. A student's ability to be safe and secure during school,
 63 an education program or activity conducted by a public K-12
 64 educational institution, or a school-related or school-sponsored
 65 program or activity, including, but not limited to, field trips,
 66 extracurricular activities, or transit on a school bus of a
 67 public K-12 educational institution for any of the actions under
 68 this subparagraph.

69 (3) For purposes of this section:

70 (a) "Bullying" means systematically and chronically
 71 inflicting physical hurt or psychological distress on one or
 72 more students or school employees. Incidents of bullying ~~and~~ may
 73 involve, but are not limited to:

- 74 1. Teasing;
- 75 2. Social exclusion;
- 76 3. Threat;
- 77 4. Intimidation;
- 78 5. Stalking;
- 79 6. Physical violence;
- 80 7. Theft;
- 81 8. Sexual, religious, or racial harassment;
- 82 9. ~~Public~~ Humiliation; ~~or~~
- 83 10. Emotional pain or discomfort; or
- 84 11. ~~10.~~ Destruction of property.

85 (b) "Cyberbullying" means bullying or harassment that is
 86 related to computers, as described in s. 815.03, or that
 87 otherwise occurs through the use of technology or electronic

Page 3 of 10

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581-02285-13

2013626c1

88 communications, including, but not limited to, any transfer of
 89 signs, signals, writing, images, sounds, data, or intelligence
 90 of any nature transmitted in whole or in part by a wire, radio,
 91 electromagnetic system, photoelectronic system, or photooptical
 92 system, or other transmission or medium such as electronic mail,
 93 text messaging, instant messaging, social media, Internet
 94 communications, or facsimile communications. Cyberbullying may
 95 involve, but is not limited to:

96 1. Harassment and cyberstalking, as defined in s. 784.048.

97 2. Creating a web page on which, or a weblog in which, the
 98 creator assumes the identity of another person, or knowingly
 99 impersonates another person, while posting content or sending
 100 messages.

101 3. Electronically sharing or distributing material and
 102 communications to more than one person or posting material on
 103 one or more electronic media that may be accessed by one or more
 104 persons.

105 (c) ~~(b)~~ "Harassment" means any threatening, insulting, or
 106 dehumanizing gesture, use of data or computer software, or
 107 written, verbal, or physical conduct directed against a student
 108 or school employee which ~~that~~:

109 1. Places a student or school employee in reasonable fear
 110 of harm to his or her person or damage to his or her property;

111 2. Has the effect of substantially interfering with a
 112 student's educational performance, opportunities, or benefits;

113 ~~or~~
 114 3. As provided in s. 784.048(1)(a), serves no legitimate
 115 purpose and causes substantial emotional distress to a student
 116 or a school employee; or

Page 4 of 10

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581-02285-13

2013626c1

117 ~~4.3-~~ Has the effect of materially and substantially
 118 disrupting or interfering with the orderly operation of a school
 119 or the ability of a student to be safe and secure at a school or
 120 at a school-sponsored event.

121 ~~(c) Definitions in s. 815.03 and the definition in s.~~
 122 ~~784.048(1)(d) relating to stalking are applicable to this~~
 123 ~~section.~~

124 (d) The definitions of "bullying," "cyberbullying,"
 125 "bullying" and "harassment" include:

126 1. Retaliation against a student or school employee by
 127 another student or school employee for asserting or alleging an
 128 act of bullying, cyberbullying, or harassment. Reporting an act
 129 of bullying, cyberbullying, or harassment that is not made in
 130 good faith is considered retaliation.

131 2. Perpetuation of bullying, cyberbullying, or harassment
 132 ~~conduct listed in paragraph (a) or paragraph (b)~~ by an
 133 individual or group of individuals with intent to demean,
 134 dehumanize, embarrass, or cause physical harm to a student or
 135 school employee by:

136 a. Incitement or coercion;

137 b. Accessing or knowingly causing or providing access to
 138 data or computer software through a computer, computer system,
 139 ~~or computer network, or other computer-related means described~~
 140 in s. 815.03 within the scope of the district school system; or

141 c. Acting in a manner that has an effect substantially
 142 similar to the effect of bullying, cyberbullying, or harassment.

143 (4) By December 1, 2008, each school district shall adopt a
 144 policy prohibiting bullying and harassment of any student or
 145 employee of a public K-12 educational institution. By December

581-02285-13

2013626c1

146 1, 2013, each school district shall incorporate into such policy
 147 a prohibition on cyberbullying of any student or employee of a
 148 public K-12 educational institution. Each school district's
 149 policy must substantially conform ~~shall be in substantial~~
 150 ~~conformity~~ with the Department of Education's model policy
 151 mandated in subsection (5). The school district bullying,
 152 cyberbullying, and harassment policy must provide ~~shall afford~~
 153 all students the same protection regardless of their status
 154 under the law. The school district may establish separate
 155 discrimination policies that include categories of students. The
 156 school district shall involve students, parents, teachers,
 157 administrators, school staff, school volunteers, community
 158 representatives, and local law enforcement agencies in the
 159 process of adopting the policy. The school district policy must
 160 be implemented in a manner that is ongoing throughout the school
 161 year and integrated with a school's curriculum, a school's
 162 discipline policies, and other violence prevention efforts. The
 163 school district policy must contain, at a minimum, the following
 164 components:

165 (a) A statement prohibiting bullying, cyberbullying, and
 166 harassment.

167 (b) ~~Definitions A definition~~ of bullying, cyberbullying,
 168 ~~and a definition of~~ harassment which that include the
 169 definitions listed in this section.

170 (c) A description of the type of behavior expected from
 171 each student and employee of a public K-12 educational
 172 institution.

173 (d) The consequences for a student or employee of a public
 174 K-12 educational institution who commits an act of bullying,

581-02285-13

2013626c1

175 cyberbullying, or harassment.

176 (e) The consequences for a student or employee of a public
177 K-12 educational institution who is found to have wrongfully and
178 intentionally accused another of an act of bullying,
179 cyberbullying, or harassment.

180 (f) A procedure for reporting an act of bullying,
181 cyberbullying, or harassment, including provisions that
182 authorize ~~permit~~ a person to anonymously report such an act.
183 However, this paragraph does not authorize ~~permit~~ formal
184 disciplinary action to be based solely on an anonymous report.

185 (g) A procedure for the prompt investigation of a report of
186 bullying, cyberbullying, or harassment and the persons
187 responsible for the investigation. The investigation of a
188 reported act of bullying, cyberbullying, or harassment is deemed
189 to be a school-related activity and begins with a report of such
190 an act. Incidents that require a reasonable investigation when
191 reported to appropriate school authorities must ~~shall~~ include
192 alleged incidents of bullying, cyberbullying, or harassment
193 allegedly committed against a child while the child is en route
194 to school aboard a school bus or at a school bus stop.

195 (h) A process to investigate whether a reported act of
196 bullying, cyberbullying, or harassment is within the scope of
197 the district school system and, if not, a process for referral
198 of such an act to the appropriate jurisdiction. Computers
199 without web-filtering software, or computers with web-filtering
200 software that is disabled, shall be used when complaints of
201 cyberbullying are investigated.

202 (i) A procedure for providing immediate notification to the
203 parents of a victim of bullying, cyberbullying, or harassment

581-02285-13

2013626c1

204 and the parents of the perpetrator of an act of bullying,
205 cyberbullying, or harassment, as well as notification to all
206 local agencies where criminal charges may be pursued against the
207 perpetrator.

208 (j) A procedure to refer victims and perpetrators of
209 bullying, cyberbullying, or harassment for counseling.

210 (k) A procedure for including incidents of bullying,
211 cyberbullying, or harassment in the school's report of data
212 concerning school safety and discipline required under s.
213 1006.09(6). The report must include each incident of bullying,
214 cyberbullying, or harassment and the resulting consequences,
215 including discipline and referrals. The report must include in a
216 separate section each reported incident of bullying,
217 cyberbullying, or harassment that does not meet the criteria of
218 a prohibited act under this section with recommendations
219 regarding such incidents. The Department of Education shall
220 aggregate information contained in the reports.

221 (l) A procedure for providing instruction to students,
222 parents, teachers, school administrators, counseling staff, and
223 school volunteers on identifying, preventing, and responding to
224 bullying, cyberbullying, ~~or~~ harassment, and behavior that leads
225 to bullying, cyberbullying, or harassment.

226 (m) A procedure for regularly reporting to a victim's
227 parents the actions taken to protect the victim.

228 (n) A procedure for publicizing the policy, which must
229 include its publication in the code of student conduct required
230 under s. 1006.07(2) and in all employee handbooks.

231 (5) To assist school districts in developing policies
232 prohibiting bullying and harassment, the Department of Education

581-02285-13 2013626c1

233 shall ~~provide~~ develop a model policy ~~that shall be provided~~ to
 234 school districts no later than October 1, 2008. The Department
 235 of Education shall incorporate into such model policy a
 236 prohibition on cyberbullying no later than October 1, 2013. The
 237 department's model policy must include factors that school
 238 officials must consider when responding to an incident of
 239 bullying, cyberbullying, or harassment which occurs off school
 240 grounds or outside a school-sponsored activity or event. The
 241 model policy must be included in the code of student conduct and
 242 must provide clear notice to a student and his or her parent
 243 that the district will discipline a person who violates this
 244 section.

245 (6) A school employee, school volunteer, student, or parent
 246 who promptly reports in good faith an act of bullying,
 247 cyberbullying, or harassment to the appropriate school official
 248 designated in the school district's policy and who makes this
 249 report in compliance with the procedures set forth in the policy
 250 is immune from a cause of action for damages arising out of the
 251 reporting itself or any failure to remedy the reported incident.

252 (7) (a) The physical location or time of ~~an access of a~~
 253 ~~computer-related~~ incident or situation cannot be raised as a
 254 defense in any disciplinary action initiated under this section.

255 (b) This section does not apply to any person who uses data
 256 or computer software that is accessed through a computer,
 257 computer system, or computer network when acting within the
 258 scope of his or her lawful employment or investigating a
 259 violation of this section in accordance with school district
 260 policy. The definitions in s. 815.03 apply to this section.

261 (8) Distribution of safe schools funds to a school district

581-02285-13 2013626c1

262 provided in the 2014-2015 ~~2009-2010~~ General Appropriations Act
 263 is contingent upon and payable to the school district upon the
 264 Department of Education's approval of the school district's
 265 bullying, cyberbullying, and harassment policy. The department's
 266 approval of each school district's bullying, cyberbullying, and
 267 harassment policy shall be granted upon certification by the
 268 department that the school district's policy has been submitted
 269 to the department and is in substantial conformity with the
 270 department's model bullying, cyberbullying, and harassment
 271 policy as mandated in subsection (5). Distribution of safe
 272 schools funds provided to a school district in fiscal year 2014-
 273 2015 ~~2010-2011~~ and thereafter shall be contingent upon and
 274 payable to the school district upon the school district's
 275 compliance with all reporting procedures contained in this
 276 section.

277 (9) On or before January 1 of each year, the Commissioner
 278 of Education shall report to the Governor, the President of the
 279 Senate, and the Speaker of the House of Representatives on the
 280 implementation of this section. The report shall include data
 281 collected pursuant to paragraph (4)(k).

282 (10) ~~Nothing in~~ This section does not ~~shall be construed to~~
 283 ~~abridge the rights of students or school employees which that~~
 284 are protected by the First Amendment to the Constitution of the
 285 United States.

286 Section 3. This act shall take effect July 1, 2013.



The Florida Senate

Committee Agenda Request

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APR 15 2013

**SENATE
RULES COMMITTEE**

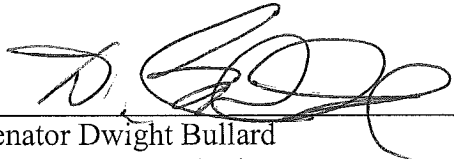
To: Senator John Thrasher, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: April 15, 2013

I respectfully request that **Senate Bill #626**, relating to Bullying in Public Schools, be placed on the:

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



Senator Dwight Bullard
Florida Senate, District 39

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 262

INTRODUCER: Banking and Insurance Committee and Senator Smith

SUBJECT: Delivery of Insurance Policies

DATE: April 19, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	Fav/CS
2.	Malcolm	Hrdlicka	CM	Favorable
3.	Johnson	Phelps	RC	Favorable
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 262 allows an insurer to use electronic transmission as an acceptable means to meet statutory requirements for delivery of an insurance policy. Under current law, an insurer must mail or deliver a policy to the insured within 60 days of when coverage begins. CS/SB 262 adds electronic transmission to the acceptable means for delivering a policy. The CS provides specific provisions that must be followed for electronic transmission for certain types of commercial risks. For these specified types of coverage, the electronic transmission of the policy is required to include notice of the recipient's right to receive the policy by United States mail rather than by electronic transmission. The insurer must provide a paper copy of the policy if the insured communicates to the insurer electronically or in writing that he or she does not agree to delivery by electronic means.

This bill amends s. 627.421, F.S.

II. Present Situation:

Section 627.421, F.S., requires every insurance policy¹ to be mailed or delivered to the insured (policyholder) within 60 days after the insurance takes effect. Insurance policies are typically only delivered when the policy is issued and are not delivered each time the policy is renewed.

Applicability of Federal and State Law Relating to Electronic Transactions

E-SIGN

The Federal Electronic Signatures in Global and National Commerce Act (E-SIGN) applies to electronic transactions involving interstate commerce.² Insurance is specifically included in E-SIGN.³ E-SIGN provides that a signature, contract, or other record will not be denied legal effect solely because it is in electronic format or because electronic signatures or records were used in its formation.⁴ E-SIGN states that it does not require any person to agree to use or accept electronic records or signatures, other than a governmental record.⁵ E-SIGN provides that information required by law to be in writing can be made available electronically to a consumer only if:

- The consumer has affirmatively consented to receive the information electronically and has not withdrawn that consent;
- The consumer has been provided a “clear and conspicuous statement”:
 - Informing the consumer of any right to receive the record in paper format;
 - Informing the consumer of the right to withdraw the consent;
 - Informing the consumer whether the consent applies only to the particular transaction or identified categories of records;
 - Describing the procedures for the consumer to withdraw consent;
 - Informing the consumer of how a paper copy may be obtained; and
 - Informing the consumer whether a fee will be charged for the paper copy.
- The consumer has been provided a statement of the hardware and software needed to access and retain the electronic records;
- The consumer consents electronically, reasonably demonstrating the ability to access the information; and
- If a change in the hardware or software requirements creates a material risk that the consumer will not be able to access or retain records, the provider of the records must:
 - Provide the consumer with a statement of the revised hardware and software that would be needed; and
 - Provide the consumer with a statement of the right to withdraw consent without the imposition of any fees or other consequence that was not specified in the initial disclosures.⁶

¹ Section 627.402(1), F.S., defines “policy” to include endorsements, riders, and clauses. However, reinsurance, wet marine and transportation insurance, title insurance, and credit life or credit disability insurance policies do not have to be mailed or delivered pursuant to s. 627.421, F.S. See s. 627.401, F.S.

² See Section 101, Pub. L. No. 106-229, 106th Cong. (June 30, 2000).

³ 15 U.S.C. s. 7001(i).

⁴ 15 U.S.C. s. 7001(a)(2).

⁵ 15 U.S.C. s. 7001(b)(2).

⁶ 15 U.S.C. s. 7001(c)(1).

While federal law generally preempts state law, E-SIGN allows states to be exempt from federal preemption by conforming state legislation to one of two options.⁷ First, a state may avoid federal preemption by E-SIGN if the state enacts the Uniform Electronic Transaction Act (UETA) as approved by the National Conference of Commissioners on Uniform State Laws in 1999.⁸ If, however, the state enactment makes any exception to the scope of UETA, it will be preempted to the extent that the exception is inconsistent with E-SIGN.⁹ Second, a state may avoid federal preemption by E-SIGN if the state enacts legislation that specifies alternative procedures for the use and determination of legal validity of electronic transactions that: (1) are consistent with E-SIGN; (2) do not give greater legal status to specific types of technologies or security measures; and (3) specifically reference E-SIGN in the state statute.¹⁰

FUETA

In 2000, Florida adopted the substantive provisions of UETA, with minor differences added to reflect Florida law, as Florida's Uniform Electronic Transaction Act (FUETA).¹¹ FUETA contains a number of provisions regarding the use of electronic records and signatures in a transaction. The goal of FUETA is to make sure that transactions that are finalized electronically are as enforceable as transactions memorialized on paper with manual signatures.¹²

FUETA does not require a record to be sent, communicated, received, or used electronically.¹³ It applies only to transactions in which each party has agreed to conduct the transaction electronically.¹⁴ Whether the parties have agreed to conduct the transaction electronically is determined from the context, the surrounding circumstances, and the parties' conduct.¹⁵ If a party agrees to conduct a transaction electronically, that party may refuse to conduct other transactions electronically.¹⁶ If the parties have agreed to conduct a transaction electronically and a provision of law requires the delivery of information in writing, that requirement is satisfied by an electronic transmission.¹⁷ However, if another provision of law requires a record to be sent in a specified manner, the record must comply with the posting, transmittal, and content requirements of the other statute.¹⁸

⁷ 15 U.S.C. 7002(a).

⁸ 15 U.S.C. 7002(a)(1).

⁹ *Id.*

¹⁰ 15 USC s. 7002(a)(2).

¹¹ Chapter 2000-164, s. 1, L.O.F.; s. 668.50, F.S.; see Final Staff Analysis for CS/CS/SB 1334 by the House Committee on Utilities & Communications, 10, available at http://archive.flsenate.gov/session/index.cfm?BI_Mode=View&BillInfo&Mode=Bills&ElementID=JumpToBox&SubMenu=1&Year=2000&billnum=1334 (last visited April 9, 2013) (indicating that "the bill is identical to the act recommended by the National Commissioners for Uniform State Laws except for provisions that were added to conform to Florida law and provisions added to subsection (11) requiring a first time notary to complete certain training requirements."); Uniform Electronic Transactions Act (1999), available at http://www.uniformlaws.org/shared/docs/electronic%20transactions/ueta_final_99.pdf (last visited April 9, 2013); National Conference of State Legislatures, *Uniform Electronic Transactions Act*, available at <http://www.ncsl.org/issuesresearch/telecom/uniformelectronic-transactions-acts.aspx> (last visited April 9, 2013). Although FUETA has been amended five times since adoption in 2000, none of the amendments were substantive.

¹² Uniform Law Commission, *Electronic Transactions Act Summary*, available at <http://www.uniformlaws.org/ActSummary.aspx?title=Electronic%20Transactions%20Act> (last visited April 9, 2013). See s. 668.50(7), F.S.

¹³ Section 668.50(5)(a), F.S.

¹⁴ Section 668.50(5)(b), F.S.

¹⁵ *Id.*

¹⁶ Section 668.50(5)(c), F.S.

¹⁷ Section 668.50(8)(a), F.S.

¹⁸ Section 668.50(8)(b), F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 627.421, F.S., to allow an insurer to use electronic transmission as an acceptable means to meet statutory requirements for delivery of an insurance policy. The CS provides specific provisions that must be followed for electronic transmission of policies for the following types of coverage:

- Workers' compensation and employers' liability;
- Commercial automobile liability;
- Commercial automobile physical damage;
- Commercial lines residential property;
- Commercial nonresidential property;
- Farm owners insurance; and
- The types of commercial lines risks that are not subject to the rating requirements of s. 627.062(a) and (f), F.S.

For the specified types of coverage, the electronic transmission of the policy is required to include notice of the recipient's right to receive the policy by United States mail rather than by electronic transmission. The insurer must provide a paper copy of the policy if the insured communicates to the insurer electronically or in writing that he or she does not agree to delivery by electronic means.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By permitting insurers to deliver insurance policies electronically, the bill may reduce the administrative costs to insurers associated with printing and mailing.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

CS by Banking and Insurance on April 2, 2013:

The CS allows an insurer to use electronic transmission as an acceptable means to meet statutory requirements for delivery of an insurance policy. The CS provides specific provisions that must be followed for electronic transmission of policies for the following types of coverage:

- Workers' compensation and employers' liability;
- Commercial automobile liability;
- Commercial automobile physical damage;
- Commercial lines residential property;
- Commercial nonresidential property;
- Farm owners insurance; and
- The types of commercial lines risks that are not subject to the rating requirements of s. 627.062(a) and (f), F.S.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Smith

597-03443-13

2013262c1

A bill to be entitled

An act relating to the delivery of insurance policies; amending s. 627.421, F.S.; providing that an insurance policy may be delivered by electronic means; specifying the types of policies that can be delivered electronically; requiring that a paper copy of the policy be provided upon request; providing an effective date.

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

Section 1. Subsection (1) of section 627.421, Florida Statutes, is amended to read:

627.421 Delivery of policy.—

(1) Subject to the insurer's requirement as to payment of premium, every policy shall be mailed, ~~or~~ delivered, or electronically transmitted to the insured or to the person entitled thereto within not later than 60 days after the effectuation of coverage. Electronic transmission of a policy for commercial risks, including, but not limited to, workers' compensation and employers' liability, commercial automobile liability, commercial automobile physical damage, commercial lines residential property, commercial nonresidential property, farm owners insurance, and the types of commercial lines risks set forth in s. 627.062(3)(d), constitutes delivery to the insured or to the person entitled to delivery. The transmission must include notice to the insured, or to the person entitled to delivery, of his or her right to receive the policy via United States mail rather than via electronic transmission. If the

Page 1 of 2

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

597-03443-13

2013262c1

insured or the person entitled to delivery communicates to the insurer electronically or in writing that he or she does not agree to delivery by electronic means, a paper copy of the policy shall be provided to the insured or the person entitled to delivery.

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

Page 2 of 2

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-22-2013

Meeting Date

Topic E delivery

Bill Number CS/SB 262 (if applicable)

Name Meredith Snowden

Amendment Barcode (if applicable)

Job Title consultant

Address 215 S Monroe St. Suite 701

Phone 850 510 9257

Tall FL 32301

E-mail MSnowden@cflaw.com

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

Representing FCCI insurance group

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)

4/22/2013

Meeting Date

Topic _____

Bill Number 262
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

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
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 304

INTRODUCER: Committee on Governmental Oversight and Accountability and Criminal Justice Committee

SUBJECT: OGSR/Certain Personal Identifying Information of Domestic & Sexual Violence Victims

DATE: April 18, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon		cj SPB 7000 as introduced
2.	Naf	McVaney	GO	Fav/CS
3.	Dugger	Cannon	RC	Favorable
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes
- B. AMENDMENTS..... Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

CS/SB 304 is the result of an Open Government Sunset Review performed by the Committee on Criminal Justice.

Current law¹ provides a public records exemption for certain information documenting an act of domestic violence or sexual violence submitted to an agency by an agency employee. Specifically, personal identifying information that is contained in records documenting an act of domestic or sexual violence and that is submitted to an agency by an agency employee is confidential and exempt from public records requirements. In addition, a written request for leave that is submitted by an agency employee, and any agency timesheet that reflects such a request, are confidential and exempt until one year after the leave has been taken.

¹ Section 741.313(7), F.S.

The public records exemption is subject to review under the Open Government Sunset Review Act.² It will sunset on October 2, 2013, unless saved from repeal through reenactment by the Legislature. This bill reenacts the exemption and makes clarifying drafting changes.

This bill does not expand the scope of the public records exemption and therefore does not require a two-thirds vote of the members present and voting in each house of the Legislature for passage.

This bill amends section 741.313(7) of the Florida Statutes.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.³ The records of the legislative, executive, and judicial branches are specifically included.⁴

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act⁵ guarantees every person's right to inspect and copy any state or local government public record⁶ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁷

Only the Legislature may create an exemption to public records requirements.⁸ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁹ Further, the exemption must be no broader than necessary to

² Section 119.15, F.S.

³ FLA. CONST., art. I, s. 24(a).

⁴ *Id.*

⁵ Chapter 119, F.S.

⁶ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁷ Section 119.07(1)(a), F.S.

⁸ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

⁹ FLA. CONST., art. I, s. 24(c).

accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹⁰ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹¹

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹² It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹³

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹⁴ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- It protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- It protects trade or business secrets.¹⁵

The Act also requires specified questions to be considered during the review process.¹⁶

When reenacting an exemption that will repeal, a public necessity statement and a two-thirds vote for passage are required if the exemption is expanded.¹⁷ A public necessity statement and a two-thirds vote for passage are not required if the exemption is reenacted with grammatical or

¹⁰ The bill may, however, contain multiple exemptions that relate to one subject.

¹¹ FLA. CONST., art. I, s. 24(c).

¹² Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹³ Section 119.15(3), F.S.

¹⁴ Section 119.15(6)(b), F.S.

¹⁵ *Id.*

¹⁶ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

¹⁷ An exemption is expanded when it is amended to include more records, information, or meetings or to include meetings as well as records, or records as well as meetings.

stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception¹⁸ to the exemption is created.¹⁹

Employee Leave for Domestic Violence or Sexual Violence

Section 741.313, F.S., applies to public and private employers with 50 or more employees and to employees who have been employed by an employer for at least three months.²⁰ An employee may take up to three days of leave in any 12 month period if the employee or family member is a victim of domestic or sexual violence. The leave may be with or without pay, at the discretion of the employer.²¹ An employee may use the leave from work to do any of the following:

- Seek a protective injunction against domestic, sexual, dating, or repeat violence;
- Obtain medical care or mental health counseling related to the act of domestic or sexual violence;
- Obtain services from a victim services organization as a result of the act of domestic or sexual violence;
- Seek safe housing; or
- Seek legal assistance in addressing issues relating to the domestic or sexual violence, including attending or preparing for court proceedings.²²

An employee is required to provide sufficient documentation of the act of domestic or sexual violence as well as advance notice of the leave, except in cases of imminent danger to the employee or the employee's family. Additionally, he or she must use all available annual or vacation leave, personal leave, and sick leave, unless this requirement is waived by the employer.²³

Current Exemption Under Review

In 2007, the Legislature created a public records exemption for certain information documenting an act of domestic violence that is submitted to an agency²⁴ by an agency employee.²⁵ In 2008, the Legislature extended the same protection to victims of sexual violence.²⁶ Specifically, s. 741.313(7), F.S., protects from public disclosure personal identifying information contained in records documenting an act of domestic or sexual violence that is submitted to an agency by an agency employee. In addition, a written request for leave submitted by an agency employee for absences related to domestic or sexual violence, and any agency time sheet that reflects such a

¹⁸ An example of an exception to a public records exemption would be allowing an additional agency access to confidential and exempt records.

¹⁹ See *State of Florida v. Ronald Knight*, 661 So.2d 344 (Fla. 4th DCA 1995) (holding that nothing in s. 24, art. I of the Florida Constitution requires exceptions to a public records exemption to contain a public necessity statement).

²⁰ Section 741.313(3), F.S.

²¹ Section 741.313(2)(a), F.S.

²² Section 741.313(2)(b), F.S.

²³ Section 741.313(4), F.S.

²⁴ For purposes of the public records exemption, "agency" means an agency as defined in s. 119.011(2), F.S. (*see* footnote 6 for definition).

²⁵ Chapter 2007-108, s. 1, Laws of Fla.

²⁶ Chapter 2008-254, s. 1, Laws of Fla.

request, is confidential and exempt from public record requirements until one year after the leave has been taken.²⁷

This public records exemption stands repealed on October 2, 2013, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act.²⁸

Based upon the Open Government Sunset Review of the exemption, professional staff of the Senate Criminal Justice Committee recommends that the Legislature retain the public records exemption established in s. 741.313(7), F.S. This recommendation is made in light of information gathered for the Open Government Sunset Review, indicating that there is a public necessity to continue to protect personal identifying information contained in records documenting an act of domestic or sexual violence that is submitted to an agency by an agency employee because disclosure would jeopardize their safety and cause emotional distress.²⁹

III. Effect of Proposed Changes:

This bill removes the repeal date in s. 741.313(7), F.S., thereby reenacting the public records exemption for certain personal identifying information contained in records documenting an act of domestic or sexual violence that is submitted to an agency by an agency employee, including a written request for leave submitted by an agency employee for absences related to domestic or sexual violence, and any agency time sheet that reflects such a request until one year after the leave has been taken.

The bill also makes clarifying drafting changes to the exemption.

The bill's effective date is October 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds, reduce the authority that

²⁷ *Id.* The public necessity statement in the original legislation creating the exemption states that the leave request is temporary and available one year after the leave has been taken so as to provide continued public oversight of public moneys.

²⁸ Section 741.313(7)(c), F.S.

²⁹ According to a majority of survey responses (48 out of 65) from 23 state agencies and 41 city and county governmental entities, and input from the Florida Coalition Against Domestic Violence and the Florida Council Against Sexual Violence, this exemption should be reenacted because it protects information that is personal and highly sensitive, the release of which could subject the employee to embarrassment, emotional distress, escalation of violence, and could deter the employee from seeking assistance from the agency or availing themselves of the benefits of the statute. Twenty-seven respondents recommended reenactment with no other changes. Eight respondents thought law enforcement should have access to the information. Nine respondents suggested reenactment as well as deleting the one-year time limitation. (*But see* note 22 *supra* indicating that the original public necessity statement regarding the time limitation was to provide continued public oversight of public moneys.) Three respondents recommended repealing the exemption, while 14 had no opinion either way. Survey respondents also indicated receiving ten leave requests since January 2008. The First Amendment Foundation stated that it would not oppose reenacting the exemption because the exemption is sufficiently narrow. Survey responses from this Open Government Sunset Review are on file with the Senate Criminal Justice Committee in Tallahassee, Florida.

counties or municipalities have to raise revenues in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

This bill reenacts an existing public records exemption. The bill does not expand the scope of the exemption; therefore, a two-thirds vote of the members present and voting in each house of the Legislature is not required.

C. Trust Funds Restrictions:

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. Additional Information:

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

CS by Governmental Oversight and Accountability on March 14, 2013:

The CS differs from the original bill in that it makes clarifying drafting changes to the existing public records exemption.

B. Amendments:

None.

By the Committees on Governmental Oversight and Accountability;
and Criminal Justice

585-02435-13

2013304c1

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act; amending s. 741.313, F.S., relating
4 to an exemption from public record requirements for
5 certain information submitted to an agency by an
6 agency employee who is a victim of domestic violence
7 or sexual violence; making clarifying changes;
8 removing the scheduled repeal of the exemption;
9 providing an effective date.

10

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

12

13 Section 1. Subsection (7) of section 741.313, Florida
14 Statutes, is amended to read:

15 741.313 Unlawful action against employees seeking
16 protection.—

17 (7) (a) Personal identifying information ~~that is~~ contained
18 in records documenting an act of domestic violence or sexual
19 violence, and that is submitted by an agency employee to an
20 agency, as defined in chapter 119, by an agency employee under
21 the requirements of this section is confidential and exempt from
22 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

23 (b) A written request for leave ~~that is~~ submitted by an
24 agency employee under the requirements of this section, and any
25 agency time sheet that reflects such a request, are confidential
26 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
27 Constitution until 1 year after the leave has been taken.

28 ~~(c) This subsection is subject to the Open Government~~
29 ~~Sunset Review Act in accordance with s. 119.15, and shall stand~~

Page 1 of 2

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30 ~~repealed on October 2, 2013, unless reviewed and saved from~~
31 ~~repeal through reenactment by the Legislature.~~
32 Section 2. This act shall take effect October 1, 2013.

Page 2 of 2

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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)

4/22/13
Meeting Date

Topic _____

Bill Number CS/SB 304
(if applicable)

Name Greg Pound

Amendment Barcode _____
(if applicable)

Job Title _____

Address 9106 Sunrise Dr.
Street
Largo Fla. 33773
City State Zip

Phone _____

E-mail _____

Speaking: For Against Information

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
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 836

INTRODUCER: Rules Committee, Banking and Insurance Committee, and Senator Simmons

SUBJECT: Insurer Solvency

DATE: April 23, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	Fav/CS
2.	Munroe	Cibula	JU	Favorable
3.	Johnson	Phelps	RC	Fav/CS
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/CS/SB 836 revises provisions within the Insurance Code relating to solvency requirements and regulatory oversight of insurers by the Office of Insurance Regulation (OIR). The bill incorporates provisions of model acts and regulations that have been adopted by the National Association of Insurance Commissioners (NAIC).¹ Some of these provisions in the bill are in response to the 2008 financial crisis and the globalization of the insurance market and are intended to enhance the regulation of insurers as well as their affiliated entities and provide more solvency tools for evaluating risks within insurance groups. The bill provides the following changes:

- Requires acquirers of controlling interests to disclose enterprise risk, and requires that ultimate controlling persons must file an annual enterprise risk report with the OIR that identifies material risk within the insurance company holding company system that could pose a risk or have a material adverse effect upon the insurer;

¹ The NAIC is a voluntary association of insurance regulators from all 50 states. The NAIC was created to coordinate regulation and examination of multistate insurers, provide a forum for addressing major insurance issues, and promote uniform model laws among the states.

- Requires insurance holding companies to file an annual registration statement, including disclosure of material risks between affiliates;
- Allows the OIR to examine an insurer and its affiliates to assess enterprise risk;
- Incorporates a risk-based capital trend test for life and health and property and casualty insurers;
- Requires health maintenance organizations and prepaid limited health service organizations to file risk-based capital reports;
- Requires insurers to file actuarial opinion summaries and supporting workpapers annually;
- Provides a privilege for memoranda supporting actuarial opinions on reserves, actuarial opinion summaries and related information and provides for confidentiality of enterprise risk reports and actuarial opinion summaries;
- Authorizes the OIR to impose sanctions for noncompliance with the requirements of s. 628.461, F.S., and s. 628.801, F.S.; and
- Allows the OIR to participate in supervisory colleges with other regulators for the regulation of any domestic insurer that is part of an insurance holding company system with international operations.

As a member of the NAIC, the OIR is required to participate in the Financial Regulation Standards and Accreditation Program. For purposes of the NAIC Fall Accreditation Review, the OIR has identified model provisions or updates that are not found in the current Insurance Code that must be implemented or updated for the OIR to maintain accreditation.² The adoption of the Property and Casualty Trend Test of the Risk-Based Capital Model Act and the Property and Casualty Actuarial Opinion Model Law are necessary for purposes of accreditation in the fall 2013 since the accreditation effective dates for these provisions were January 1, 2012, and January 1, 2010, respectively. In addition, two other NAIC model acts, Risk-Based Capital for Health Organizations and the Life Trend Test of the Risk Based Capital Model Act are necessary for accreditation effective January 1, 2015, and January 1, 2017, respectively. The accreditation effective date for amendments to the Insurance Holding Company System Regulatory Act is tentatively set for January 1, 2016.

This bill substantially amends the following sections of the Florida Statutes: 624.4085, 624.424, 625.121, 628.461, 628.801, 628.803, 628.461, 636.045, 641.225, and 641.255. This bill creates the following sections of the Florida Statutes: 624.085 and 628.805.

II. Present Situation:

Insurance companies are regulated primarily by the states. The state of domicile serves as the primary regulator for insurers. Solvency regulation is designed to protect policyholders against the risk that insurers will not be able to meet their financial responsibilities. The OIR³ is primarily responsible for monitoring the solvency of regulated insurers and examining insurers to determine compliance with applicable laws, and taking administrative action, if necessary. Solvency regulation includes the requirements for starting and operating an insurance company,⁴ monitoring the financial condition of insurers through examinations and audits, and procedures

² OIR NAIC Model Act Accreditation Effective Date Chart. On file with Banking and Insurance Committee Staff.

³ Section 20.121(3)(a), F.S.

⁴ Sections 624.411 - 624.414, F.S.

for the administrative supervision,⁵ rehabilitation,⁶ or liquidation⁷ of an insurance company if it is in unsound financial condition or insolvent.

NAIC Solvency-Related Model Acts

The NAIC accreditation is a certification that legal, financial, and organizational standards are being fulfilled by the OIR. The NAIC establishes accreditation effective dates for states to adopt in substantially similar form models and acts for purposes of NAIC accreditation review.

Model Holding Company Act and Regulations

The NAIC has adopted amendments to its Insurance Holding Company System Regulatory Model Act and the Insurance Holding Company Model Regulation with Reporting Forms and Instructions. In light of the recent financial crisis, the NAIC, insurance regulators, and other stakeholders reviewed the potential impact of non-insurance operations on insurance companies in the same group to determine the best methods to evaluate the risks and activities of entities within a holding company system. The amendments to these model acts are tentatively scheduled to be effective for purposes of accreditation on January 1, 2016. The revised model act adds the concept of “enterprise risk” and requires controlled insurers to file a new annual form (Form F) detailing specified matters relating to the holding company group. The NAIC model act defines “enterprise risk” as:

[A]ny activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer of its insurance company as a whole, including, but not limited to, anything that would cause the insurer’s risk-based capital as set forth in [state requirement] or would cause the insurer to be in a hazardous financial condition.⁸

Amendments to the model act also address divestitures. Prior to the amendments to the model act, a person could divest control of an insurer without prior regulatory review as long as no single acquirer obtained control of 10 percent or more of the outstanding voting shares. Amendments to the model act generally require a person divesting control over an insurer to provide 30 days’ prior notice to the regulator.

The revised model act also provides insurance regulators access to information of an insurer and its affiliates to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party. The regulator may require any insurer registered as a controlled insurer to produce information not in the possession of the insurer if the insurer can obtain access to such. If the insurer fails to obtain the requested information, the insurer is required to provide an explanation of such failure. If the regulator determines that the

⁵ Administrative supervision allows the Department of Financial Services (DFS) to supervise the management of a consenting troubled insurance company in an attempt to cure the company’s troubles rather than close it down.

⁶ In rehabilitation, the DFS is authorized as receiver to conduct all business of the insurer in an attempt to place the insurance company back in sound financial condition.

⁷ In liquidation, the DFS is authorized as receiver to gather the insurance company’s assets, convert them to cash, distribute them to various claimants, and shut down the company.

⁸ Section 1F of the NAIC Insurance Holding Company System Regulatory Act.

explanation is without merit, the regulator may require the insurer to pay a penalty for each day's delay, or may suspend or revoke the insurer's certificate of authority.⁹

The amendments to the model acts also authorize a regulator to participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance. Insurers would pay for expenses associated with the insurance regulator's participation in a supervisory college. State, federal, and international regulators may participate in the supervision of the insurer or its affiliates.¹⁰ According to the NAIC Center for Insurance Policy & Research, "a supervisory college is a meeting of insurance regulators or supervisors where the topic of discussion is regulatory oversight of one specific insurance group that is writing significant amounts of insurance in other jurisdictions."¹¹ Supervisory colleges facilitate oversight of internationally active insurance companies at the group level and promote regulatory information sharing, subject to applicable confidentiality agreements.¹²

Risk-Based Capital for Insurers & Health Organizations

Risk-based capital (RBC) is a capital adequacy standard that represents the amount of required capital that an insurer must maintain, based on the inherent risks in the insurer's operations. It is determined by a formula that considers various risks depending on the type of insurer (e.g., subsidiary insurance companies, fixed income, equity, credit, reserves, and net written premium). The RBC provides a safety net for insurers, is uniform among states, and provides state insurance regulators with authority for timely corrective action.¹³ The NAIC's *Risk-Based Capital for Insurers Model Act* provides that states must require both life and health and property and casualty insurers to submit RBC filings with their regulators. Presently, this requirement is incorporated in the Insurance Code; however, it does not apply to health maintenance organizations (HMOs) and prepaid limited health service organizations.¹⁴ Prepaid limited health service organizations provide limited health services (such as dental or vision care) through an exclusive panel of providers in return for a prepayment,¹⁵ and HMOs generally provide a range of health coverage with contracted providers.¹⁶ The NAIC Risk-Based Capital Health Organizations Model Act will be effective as an accreditation standard beginning January 1, 2015, and applies to health maintenance organizations and prepaid limited health service organization.

⁹ Section 6B of the NAIC Insurance Holding Company System Regulatory Act.

¹⁰ Section 7 of the NAIC Insurance Holding Company System Regulatory Act.

¹¹ "Supervisory Colleges: A Regulatory Tool for Enhancing Supervisory Cooperation and Coordination," at http://www.naic.org/cipr_newsletter_archive/vol4_supervisory_colleges.htm (last visited on Apr. 10, 2013).

¹² NAIC on Supervisory Colleges at http://www.naic.org/cipr_topics/topic_supervisory_college.htm. (last visited on Apr. 10, 2013). Additionally, the linked/public records bill, SB 834, provides for confidential treatment of regulatory information, including within the context of a supervisory college that is shared between insurance regulators and law enforcement, pursuant to confidentiality agreements.

¹³ NAIC on Risk-Based Capital at http://www.naic.org/cipr_topics/topic_risk_based_capital.htm (last visited on Apr. 10, 2013).

¹⁴ Section 624.4085, F.S.

¹⁵ Section 636.003(7), F.S.

¹⁶ Section 641.19(12), F.S.

In March 2006, the NAIC adopted revisions to the Risk-Based Capital for Insurers Model Act. The revisions were made to incorporate a new Property and Casualty Trend Test for property and casualty companies. The accreditation effective date for property and casualty trend test was January 1, 2012. A statutory provision relating to a life trend test was already included in the RBC for Insurers Model Act; but the changes equalize the trigger between life and health, property, and casualty companies that prompt the need for a trend test calculation. The model was amended to cite the Property & Casualty Trend Test as a means for the company action level to be triggered. The accreditation effective date for these changes is January 1, 2017.

Property and Casualty Actuarial Opinion Model Law

The NAIC Property and Casualty Actuarial Opinion Model Law specifies that states must require property and casualty insurers to submit a Statement of Actuarial Opinion, which is a public document. The model act also requires the submission of an Actuarial Opinion Summary, an Actuarial Report, and workpapers to support each actuarial opinion, which must be treated as confidential and privileged document. The accreditation effective date for the adoption of this model act was January 1, 2010.

Current law requires insurers (except those providing life insurance and title insurance) to provide to the OIR an annual statement of its financial condition and a statement of opinion on loss and loss adjustment expense reserves prepared by an actuary or a qualified loss reserve specialists. These insurers are also required to provide supporting work papers upon the OIR's request.¹⁷ Currently, these materials are not exempt from ch. 119, F.S., relating to public records.

III. Effect of Proposed Changes:

Model Insurance Holding Company Act and Regulations

Section 1 creates s. 624.085, F.S., which establishes definitions of affiliate, affiliated person, and control. The definition of the term, "affiliated person," currently defined in s. 628.461(12)(a), F.S., is modified and transferred to this section.

Section 5 amends s. 628.461, F.S., relating to acquisition of controlling stock. The section deletes the provision in "lieu of filing an acquisition statement, a party acquiring less than 10 percent of the outstanding voting securities of an insurer, may file a disclaimer of affiliation and control."

The section specifies that the acquiring party's statement must include an agreement to file an "annual enterprise risk report," if control exists as described in section 6 of the bill. Effective January 1, 2015, the bill provides that the person required to file the statement pursuant to s. 628.461(1), F.S., will provide the annual report specified in s. 628.801(2), F.S., if control exists. A provision is added that the presumption of control may be rebutted by filing a disclaimer of control, which will be in effect unless the OIR disallows the disclaimer. Any controlling person of a domestic insurer that seeks to divest its controlling interest in the domestic insurer is required to file with the OIR a confidential notice of its proposed divestiture at least 30 days prior to the relinquishment of control.

¹⁷ Section 624.424, F.S.

Currently, an individual or company must file a letter of notification and a statement for the OIR's approval before concluding a tender offer to acquire 5 percent or more of a domestic stock insurer or of a controlling company. During the pendency of the OIR's review of an acquisition filing, the insurer is not permitted to make a "material change" to its operation or management, unless the OIR has approved or been notified, respectively. A "material change" consists of a disposal or obligation of 5 percent or more of the insurer's capital and surplus, or a change in management involving a person who has the authority to dispose or obligate 5 percent of the insurer's capital and surplus

Section 6 amends s. 628.801, F.S., relating to the regulation of insurance holding companies, to amend and update the provisions of the NAIC Insurance Holding Company System Regulatory Model Act and the Insurance Holding Company System Model Regulation by incorporating reference to the 2010 version. The section requires insurers to file an annual holding company registration statement, including disclosure of material transaction between affiliates. Currently, authorized insurers are required to register with the OIR and be subject to regulation with respect to the relationship with the holding company.

Additionally, effective January 1, 2015, the ultimate controlling person in an insurer's holding company must identify and report material risk within the system that could pose enterprise risk to the insurer in an annual enterprise risk report filed with the OIR. The enterprise risk report will contain detailed information including the holding company's business plan, material developments concerning risk management, and rating agency information. Information contained in the enterprise risk report filed with OIR is confidential and exempt as provided in s. 624.4212, F.S. The bill also adds a provision that prohibits the waiver of any applicable privilege or claim of confidentiality in the enterprise risk report because of disclosures to the OIR.

Pursuant to its authority under ch. 624, F.S., effective January 1, 2015, the OIR is authorized to examine any insurer and its affiliates registered under this section to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party.

Effective January 1, 2015, if an insurer fails to file a registration statement, a summary of the registration statement, or enterprise risk filing report within the specified time, it is a violation of this section.

The section also provides criteria under which an insurer may apply for waiver of the requirements contained in s. 628.801, F.S.

Section 7 amends s. 628.803, F.S., relating to sanctions against an insurance holding company, to provide that a violation of s. 628.461, F.S., (i.e., the filing requirements for acquisition of controlling stock) or s. 628.801, F.S., (i.e., filing requirements for insurance holding companies) may serve as an independent basis for the OIR to disapprove dividends and distributions and place the insurer under an order of supervision pursuant to part VI of ch. 624, F.S. This provision is effective January 1, 2015.

Currently, the Insurance Code states that noncompliant insurance holding companies (and their directors, officers, employees, and agents) can be subject to a number of sanctions that include:

- A penalty, not to exceed \$10,000, for failing to file registration statements or certificate of exemption;
- Civil forfeitures, not to exceed \$5,000 per violation, for knowingly engaging in transactions that have not been properly filed, approved, or in accordance with commission rule; or
- A cease and desist order for engaging in transactions or entering into contracts that violate commission rules, and rescission orders if in the best interests of the policyholders, creditors, or public.

Additionally, an officer, director, or employee of an insurance holding company willfully and knowingly submits a false statement, false report, or false filing with the intent to deceive the OIR, is guilty of a felony of the third degree.

Section 8 creates s. 628.805, F.S., which provides for the creation and participation by the OIR in a Supervisory College with other state, federal, and international regulators charged with supervising an insurer or its affiliates. This sections is effective January 1, 2015, and provides for the terms and conditions of participation. In accordance with s. 624.4212, F.S., regarding confidential information sharing, the OIR is authorized to enter into cooperative agreements with other regulators. Expenses associated with a supervisory college would be liable for the payment of reasonable expenses for the OIR's participation.

Risk-Based Capital for Insurers and Health Organizations

Section 2 amends 624.4085, F.S., to revise the definition of the term, "life and health insurer," for purposes of risk-based capital (RBC) requirements to include HMOs and prepaid limited health service organizations that are authorized in Florida and one or more other states, jurisdictions, or countries effective January 1, 2015. The section also clarifies the RBC requirements for a life and health insurer that reports using the life and health annual statement instructions and changes a company action level event to total adjusted capital that is greater than or equal to its company action level RBC but less than the product of its authorized control level risk-based capital and 3.0.

Effective January 1, 2015, the section also defines the RBC requirements for a life and health, as well as property and casualty, insurer that reports using the health annual statement instructions and defines a company action level event as total adjusted capital that is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level RBC and 3.0 and triggers the trend test calculation. An insurer that fails the Trend Test would be subject to filing a corrective action plan with the OIR.

Section 9 amends s. 636.045, F.S., relating to minimum surplus requirements, to provide that prepaid limited health service organizations authorized in Florida are subject to the RBC requirements and confidentiality requirements pursuant to s. 624.4085, F.S., and s. 624.40851, F.S., respectively.

Section 10 amends s. 641.225, F.S., relating to surplus requirements, to provide that an HMO that is authorized in one or more other states, jurisdictions, or countries is subject to the risk-based capital requirements for insurers as well as the confidentiality protections of risk-based capital information provided in ss. 624.4085, F.S., and s. 624.4615, F.S., respectively. This provision is effective January 1, 2015.

Section 11 amends s. 641.255, F.S., to provide that an HMO that is a member of a holding company system is subject to the acquisition and enterprise risk reporting requirements of s. 628.461, F.S., but not to the acquisition requirements for specialty insurers in s. 628.4615, F.S. This provision is effective January 1, 2015.

Property and Casualty Actuarial Opinion Model Law

Section 3 amends s. 624.424, F.S., to require property and casualty insurers to file an annual Statement of Actuarial Opinion and Actuarial Opinion Summary in accordance with the NAIC annual statement instructions. Proprietary business information contained in the summary is confidential and exempt under s. 624.4212, F.S. This section also protects the summary and related information from subpoena, discovery, or admissibility in any private civil action. The section also updates the Financial Services Commission's rulemaking authority under this section to specify that rule must be in substantial conformity with the 2006 Annual Financial Reporting Model Regulation adopted by the NAIC.

Standard Valuation Law for Life Insurers

Section 4 amends s. 625.121, F.S., relating to the Standard Valuation Law for life insurance, to provide that any memorandum or other material in support of the actuarial opinion that is currently confidential and exempt from s. 119.07(1), F.S., is not subject to subpoena or discovery, or admissible in evidence in any private civil action. Currently, authorized life insurance companies are required to submit an annual actuarial opinion of reserves, reflecting the valuation of reserve liabilities.¹⁸ This section also provides that neither the OIR nor any person who receives information while acting under the authority of the OIR or with whom such information is shared to testify in any private civil action concerning confidential information. These changes incorporate a provision of the NAIC Standard Valuation Law that provides that this information should not be subject to subpoena or discovery, and should not be admissible in any civil action in either documentary or testimonial form.

Effective Date

Section 12 provides that except as otherwise expressly provided in the bill, the act will take effect October 1, 2013, if SB 834 or similar legislation is adopted in the same legislative session or an extension thereof, and becomes a law.

¹⁸ Section 625.121(3)(a)1., F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Insurers may incur an indeterminate amount of administrative costs in complying with the additional reporting requirements and costs associated with the OIR's participation in the supervisory colleges.

C. Government Sector Impact:

The bill provides greater solvency tools and regulatory authority for the OIR.

Greater coordination of efforts in the examination of multistate insurers will reduce regulatory redundancies and expenses among the state regulators.

VI. Technical Deficiencies:

None.

VII. Related Issues:**Incorporation by reference and delegation of legislative authority**

Currently, s. 628.801, F.S. gives rulemaking authority to the Financial Services Commission to adopt rules regarding annual registration statements to be filed by insurers within a holding company. Lines 560-562 of the bill specify that the rules must be in accordance with the most recent NAIC Holding Company Model Act (adopted December 2010). The bill also requires the commission to "adopt subsequent amendments thereto *if the methodology remains substantially consistent*" (emphasis added).¹⁹

¹⁹ It is noted that other provisions in the current Insurance Code gives the Financial Services authority to adopt subsequent amendments to a NAIC model rule. See ss. 624.424(8)(e), F.S. and 625.121(3)(a)4., F.S.

Generally, a cross-reference to a specific statute incorporates the language of the referenced statute as it existed at the time the reference was enacted, unaffected by any subsequent amendments to or repeal of the incorporated statute.²⁰ The legislature may adopt provisions of federal statutes and administrative rules made by a federal administrative body “that are in existence and in effect at the time the legislature acts, but it would be an unconstitutional delegation of legislative power for the legislature to adopt in advance any federal act or the ruling of any federal administrative body that Congress or such administrative body might see fit to adopt in the future.”²¹

A court would likely apply this same principle in reviewing a statute that incorporates a model act promulgated by an organization, although it is uncertain whether the qualifying language “if the methodology remains substantially consistent” would change a court’s conclusion. Accordingly, while the bill may adopt the current NAIC model act in effect, it is possible that a reviewing court would not uphold that part of a statute that adopts any future amendments to that model act.²²

VIII. Additional Information:

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

CS/CS/SB 836 by Rules on April 22, 2013

CS/CS/SB 836 delays the effective date until January 1, 2015 for specified provisions of the NAIC Risk-Based Capital Health Organizations Model Act and the NAIC Model Insurance Holding Company Act and Regulations.

CS by Banking and Insurance on April 2, 2013

CS/SB 836 provides the following changes:

- Clarifies the applicability of civil process exemptions to confidential information provided to the OIR pertain to the life and health actuarial memorandum and other supporting documents and the filings made pursuant to the NAIC Insurance Holding Company System Regulatory Act.
- Clarifies the OIR’s authority to impose sanctions if an insurer violates s. 628.461, F.S., or s. 628.801, F.S.
- Authorizes the OIR to participate in a supervisory college for any domestic insurer that is part of insurance company system with international operations in order to determine an insurer’s compliance with ch. 628, F.S.
- Provides technical and conforming changes.

²⁰ See *Overstreet v. Blum*, 227 So. 2d 197 (Fla. 1969); *Hecht v. Shaw*, 151 So. 333 (1933).

²¹ *Florida Industrial Commission v. State*, 155 Fla. 772, 21 So.2d 599 (1945). See also *Freimuth v. State*, 272 So. 2d 473 (Fla.1972); *State v. Camil*, 279 So. 2d 832 (Fla.1973).

²² Courts may sever a valid portion of laws from the remainder and continue to enforce the valid portion. *Carter v. Carter Coal Co.*, 298 U.S. 238 (1936); *Florida Hosp. Waterman, Inc. v. Buster*, 984 So. 2d 478 (Fla. 2008); *Ray v. Mortham*, 742 So. 2d 1276 (Fla. 1999); *Wright v. State*, 351 So. 2d 708 (Fla. 1977).

B. Amendments:

None.

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



102538

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/22/2013	.	
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The Committee on Rules (Simmons) recommended the following:

Senate Amendment

Delete lines 117 - 177
and insert:
insurer that writes accident and health insurance only.
Effective January 1, 2015, the term also includes a health
maintenance organization that is authorized in this state and
one or more other states, jurisdictions, or countries; and a
prepaid limited health service organization that is authorized
in this state and one or more other states, jurisdictions, or
countries.

(3) (a) A company action level event includes:

1. The filing of a risk-based capital report by an insurer



14 which indicates that:

15 a. The insurer's total adjusted capital is greater than or
16 equal to its regulatory action level risk-based capital but less
17 than its company action level risk-based capital; ~~or~~

18 b. If a life and health insurer that reports using the life
19 and health annual statement instructions, the insurer has total
20 adjusted capital that is greater than or equal to its company
21 action level risk-based capital, but is less than the product of
22 its authorized control level risk-based capital and 3.0 ~~2.5~~, and
23 has a negative trend;

24 c. Effective January, 1, 2015, if a life and health or
25 property and casualty insurer that reports using the health
26 annual statement instructions, the insurer or organization has
27 total adjusted capital that is greater than or equal to its
28 company action level risk-based capital, but is less than the
29 product of its authorized control level risk-based capital and
30 3.0, and triggers the trend test determined in accordance with
31 the trend test calculation included in the Risk-Based Capital
32 Forecasting and Instructions, Health, updated annually by the
33 National Association of Insurance Commissioners; or

34 d. If a property and casualty insurer that reports using
35 the property and casualty annual statement instructions, the
36 insurer has total adjusted capital that is greater than or equal
37 to its company action level risk-based capital, but is less than
38 the product of its authorized control level risk-based capital
39 and 3.0, and triggers the trend test determined in accordance
40 with the trend test calculation included in the Risk-Based
41 Capital Forecasting and Instructions, Property/Casualty, updated
42 annually by the National Association of Insurance Commissioners;



102538

43 2. The notification by the office to the insurer of an
44 adjusted risk-based capital report that indicates an event in
45 subparagraph 1., unless the insurer challenges the adjusted
46 risk-based capital report under subsection (7); or

47 3. If, under subsection (7), an insurer challenges an
48 adjusted risk-based capital report that indicates an event in
49 subparagraph 1., the notification by the office to the insurer
50 that the office has, after a hearing, rejected the insurer's
51 challenge.

52 (6)

53 (b) If a mandatory control level event occurs:

54 1. With respect to a life and health insurer, the office
55 shall, after due consideration of s. 624.408, and effective
56 January 1, 2015, ss. 641.225 and 636.045, take any action
57 necessary to place the insurer under regulatory control,
58 including any remedy available under chapter 631. A mandatory
59 control level event is sufficient ground for the department to
60 be appointed as receiver as provided in chapter 631. The office
61 may forego taking action for up to 90 days after the mandatory
62 control level event if the office finds there is a reasonable
63 expectation that the ~~mandatory control level~~ event may be
64 eliminated within the 90-day period.

65 2. With respect to a property and casualty insurer, the
66 office shall, after due consideration of s. 624.408, take any
67 action



337146

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/22/2013	.	
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The Committee on Rules (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete line 447

and insert:

(f) Effective January 1, 2015, an agreement by the person required to file the

Delete line 450

and insert:

(g) Effective January 1, 2015, an acknowledgement by the person required to file the



337146

13 Delete line 570
14 and insert:
15 (2) Effective January 1, 2015, the ultimate controlling
16 person of every insurer

17
18 Delete line 597
19 and insert:
20 (3) Effective January 1, 2015, pursuant to chapter 624
21 relating to the examination of

22
23 Delete line 619
24 and insert:
25 (5) Effective January 1, 2015, the failure to file a
26 registration statement, or a

27
28 Delete line 645
29 and insert:
30 Section 7. Effective January 1, 2015, subsection (4) of
31 section 628.803, Florida

32
33 Delete line 654
34 and insert:
35 Section 8. Effective January 1, 2015, section 628.805,
36 Florida Statutes, is created

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38 Delete line 697
39 and insert:
40 Section 9. Effective January 1, 2015, subsection (3) is
41 added to section 636.045,



337146

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Delete line 704
and insert:
Section 10. Effective January 1, 2015, subsection (7) is
added to section 641.225,
Delete line 710
and insert:
Section 11. Effective January 1, 2015, subsection (3) is
added to section 641.255,
Delete line 716
and insert:
Section 12. Except as otherwise expressly provided in this
act, this act shall take effect October 1, 2013, if
===== T I T L E A M E N D M E N T =====
And the title is amended as follows:
Delete lines 56 - 57
and insert:
a holding company; providing contingent effective
dates.

By the Committee on Banking and Insurance; and Senator Simmons

597-03485-13

2013836c1

1 A bill to be entitled
 2 An act relating to insurer solvency; creating s.
 3 624.085, F.S.; providing definitions applicable to the
 4 Florida Insurance Code; amending s. 624.4085, F.S.;
 5 revising a definition; providing additional
 6 calculations for determining whether an insurer has a
 7 company action level event; revising provisions
 8 relating to mandatory control level events; amending
 9 s. 624.424, F.S.; requiring an insurer's annual
 10 statement to include an actuarial opinion summary;
 11 providing criteria for such summary; providing an
 12 exception for life and health insurers; updating
 13 provisions; amending s. 625.121, F.S.; protecting
 14 material supporting an insurer's annual actuarial
 15 opinion from subpoena, discovery, or admissibility in
 16 a civil action; amending s. 628.461, F.S.; revising
 17 the amount of outstanding voting securities of a
 18 domestic stock insurer or a controlling company that a
 19 person is prohibited from acquiring unless certain
 20 requirements have been met; deleting a provision
 21 authorizing an insurer to file a disclaimer of
 22 affiliation and control in lieu of a letter notifying
 23 the Office of Insurance Regulation of the Financial
 24 Services Commission of the acquisition of the voting
 25 securities of a domestic stock company under certain
 26 circumstances; requiring the statement notifying the
 27 office to include additional information; conforming a
 28 provision to changes made by the act; providing that
 29 control is presumed to exist under certain conditions;

Page 1 of 25

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

597-03485-13

2013836c1

30 specifying how control may be rebutted and how a
 31 controlling interest may be divested; deleting
 32 definitions; amending s. 628.801, F.S.; requiring an
 33 insurer to file annually by a specified date a
 34 registration statement; revising the requirements and
 35 standards for the rules establishing the information
 36 and statement form for the registration; requiring an
 37 insurer to file an annual enterprise risk report;
 38 authorizing the office to conduct examinations to
 39 determine the financial condition of registrants;
 40 providing that failure to file a registration or
 41 report is a violation of the section; providing
 42 additional grounds, requirements, and conditions with
 43 respect to a waiver from the registration
 44 requirements; amending s. 628.803, F.S.; providing for
 45 sanctions for persons who violate s. 628.461, F.S.,
 46 relating to the acquisition of controlling stock;
 47 creating s. 628.805, F.S.; authorizing the office to
 48 participate in supervisory colleges; authorizing the
 49 office to assess fees on insurers for participation;
 50 amending ss. 636.045 and 641.225, F.S.; applying
 51 certain statutes related to solvency to prepaid
 52 limited health service organizations and health
 53 maintenance organizations; amending s. 641.255, F.S.;
 54 providing for applicability of specified provisions to
 55 a health maintenance organization that is a member of
 56 a holding company; providing a contingent effective
 57 date.
 58

Page 2 of 25

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

597-03485-13 2013836c1

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

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61 Section 1. Section 624.085, Florida Statutes, is created to
62 read:

63 624.085 Other definitions.—As used in the Florida Insurance
64 Code, the term:

65 (1) "Affiliate" means any entity that exercises control
66 over or is controlled by the insurer, directly or indirectly,
67 through:

68 (a) Equity ownership of voting securities;

69 (b) Common managerial control; or

70 (c) Collusive participation by the management of the
71 insurer and affiliate in the management of the insurer or the
72 affiliate.

73 (2) "Affiliated person" of another person means:

74 (a) The spouse of such other person;

75 (b) The parents of such other person and their lineal
76 descendants, or the parents of such other person's spouse and
77 their lineal descendants;

78 (c) Any person who directly or indirectly owns or controls,
79 or holds with the power to vote, 10 percent or more of the
80 outstanding voting securities of such other person;

81 (d) Any person 10 percent or more of whose outstanding
82 voting securities are directly or indirectly owned or
83 controlled, or held with power to vote, by such other person;

84 (e) Any person or group of persons who directly or
85 indirectly control, are controlled by, or are under common
86 control with such other person;

87 (f) Any officer, director, partner, copartner, or employee

597-03485-13 2013836c1

88 of such other person;

89 (g) If such other person is an investment company, any
90 investment adviser of such company, or any member of an advisory
91 board of such company;

92 (h) If such other person is an unincorporated investment
93 company not having a board of directors, the depositor of such
94 company; or

95 (i) Any person who has entered into an agreement, written
96 or unwritten, to act in concert with such other person in
97 acquiring or limiting the disposition of securities of a
98 domestic stock insurer or controlling company.

99 (3) "Control," including the terms "controlling,"
100 "controlled by," and "under common control with," means the
101 possession, direct or indirect, of the power to direct or cause
102 the direction of the management and policies of a person,
103 whether through the ownership of voting securities, by contract
104 other than a commercial contract for goods or nonmanagement
105 services, or otherwise. Control is presumed to exist if any
106 person, directly or indirectly, owns, controls, holds with the
107 power to vote, or holds proxies representing 10 percent or more
108 of the voting securities of any other person.

109 Section 2. Paragraph (g) of subsection (1), paragraph (a)
110 of subsection (3), and paragraph (b) of subsection (6) of
111 section 624.4085, Florida Statutes, are amended to read:

112 624.4085 Risk-based capital requirements for insurers.—

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

114 (g) "Life and health insurer" means any insurer authorized
115 or eligible under the Florida Insurance Code to underwrite life
116 or health insurance. The term includes a property and casualty

597-03485-13 2013836c1

117 insurer that writes accident and health insurance only; a health
 118 maintenance organization that is authorized in this state and
 119 one or more other states, jurisdictions, or countries; and a
 120 prepaid health service organization that is authorized in this
 121 state and one or more other states, jurisdictions, or countries.

122 (3) (a) A company action level event includes:

123 1. The filing of a risk-based capital report by an insurer
 124 which indicates that:

125 a. The insurer's total adjusted capital is greater than or
 126 equal to its regulatory action level risk-based capital but less
 127 than its company action level risk-based capital; ~~or~~

128 b. If a life and health insurer that reports using the life
 129 and health annual statement instructions, the insurer has total
 130 adjusted capital that is greater than or equal to its company
 131 action level risk-based capital, but is less than the product of
 132 its authorized control level risk-based capital and 3.0 ~~2.5~~, and
 133 has a negative trend;

134 c. If a life and health or property and casualty insurer
 135 that reports using the health annual statement instructions, the
 136 insurer or organization has total adjusted capital that is
 137 greater than or equal to its company action level risk-based
 138 capital, but is less than the product of its authorized control
 139 level risk-based capital and 3.0, and triggers the trend test
 140 determined in accordance with the trend test calculation
 141 included in the Risk-Based Capital Forecasting and Instructions,
 142 Health, updated annually by the National Association of
 143 Insurance Commissioners; or

144 d. If a property and casualty insurer that reports using
 145 the property and casualty annual statement instructions, the

597-03485-13 2013836c1

146 insurer has total adjusted capital that is greater than or equal
 147 to its company action level risk-based capital, but is less than
 148 the product of its authorized control level risk-based capital
 149 and 3.0, and triggers the trend test determined in accordance
 150 with the trend test calculation included in the Risk-Based
 151 Capital Forecasting and Instructions, Property/Casualty, updated
 152 annually by the National Association of Insurance Commissioners;

153 2. The notification by the office to the insurer of an
 154 adjusted risk-based capital report that indicates an event in
 155 subparagraph 1., unless the insurer challenges the adjusted
 156 risk-based capital report under subsection (7); or

157 3. If, under subsection (7), an insurer challenges an
 158 adjusted risk-based capital report that indicates an event in
 159 subparagraph 1., the notification by the office to the insurer
 160 that the office has, after a hearing, rejected the insurer's
 161 challenge.

162 (6)

163 (b) If a mandatory control level event occurs:

164 1. With respect to a life and health insurer, the office
 165 shall, after due consideration of s. 624.408, take any action
 166 necessary to place the insurer under regulatory control,
 167 including any remedy available under chapter 631. A mandatory
 168 control level event is sufficient ground for the department to
 169 be appointed as receiver as provided in chapter 631. The office
 170 may forego taking action for up to 90 days after the mandatory
 171 control level event if the office finds there is a reasonable
 172 expectation that the ~~mandatory control level~~ event may be
 173 eliminated within the 90-day period.

174 2. With respect to a property and casualty insurer, the

597-03485-13 2013836c1
 175 office shall, after due consideration of s. 624.408, s. 641.225
 176 for a health maintenance organization, or s. 636.045 for a
 177 prepaid limited health service organization, take any action
 178 necessary to place the insurer under regulatory control,
 179 including any remedy available under chapter 631, or, in the
 180 case of an insurer that is not writing new business, may allow
 181 the insurer to continue to operate under the supervision of the
 182 office. In either case, the mandatory control level event is
 183 sufficient ground for the department to be appointed as receiver
 184 as provided in chapter 631. The office may forego taking action
 185 for up to 90 days after the mandatory control level event if the
 186 office finds there is a reasonable expectation that the
 187 ~~mandatory control level event may will~~ be eliminated within the
 188 90-day period.

189 Section 3. Subsection (1) and paragraph (e) of subsection
 190 (8) of section 624.424, Florida Statutes, are amended to read:
 191 624.424 Annual statement and other information.—

192 (1) (a) Each authorized insurer shall file with the office
 193 full and true statements of its financial condition,
 194 transactions, and affairs. An annual statement covering the
 195 preceding calendar year shall be filed on or before March 1, and
 196 quarterly statements covering the periods ending on March 31,
 197 June 30, and September 30 shall be filed within 45 days after
 198 each such date. The office may, for good cause, grant an
 199 extension of time for filing ~~of~~ an annual or quarterly
 200 statement. The statements must ~~shall~~ contain information
 201 generally included in insurers' financial statements prepared in
 202 accordance with generally accepted insurance accounting
 203 principles and practices and in a form generally used ~~utilized~~

597-03485-13 2013836c1
 204 by insurers for financial statements, sworn to by at least two
 205 executive officers of the insurer or, if a reciprocal insurer,
 206 by ~~the~~ oath of the attorney in fact or its like officer if a
 207 corporation. To facilitate uniformity in financial statements
 208 and to facilitate office analysis, the commission may by rule
 209 adopt the form for financial statements approved by the National
 210 Association of Insurance Commissioners in 2002, and ~~may adopt~~
 211 subsequent amendments thereto if the methodology remains
 212 substantially consistent, and may by rule require each insurer
 213 to submit to the office, or such organization as the office may
 214 designate, all or part of the information contained in the
 215 financial statement in a computer-readable form compatible with
 216 the electronic data processing system specified by the office.

217 (b) Each insurer's annual statement must contain:

218 1. A statement of opinion on loss and loss adjustment
 219 expense reserves made by a member of the American Academy of
 220 Actuaries or by a qualified loss reserve specialist, pursuant to
 221 ~~under~~ criteria established by rule of the commission. In
 222 adopting the rule, the commission shall ~~must~~ consider any
 223 criteria established by the National Association of Insurance
 224 Commissioners. The office may require semiannual updates of the
 225 annual statement of opinion for ~~as to~~ a particular insurer if
 226 the office has reasonable cause to believe that such reserves
 227 are understated to the extent of materially misstating the
 228 financial position of the insurer. Workpapers in support of the
 229 statement of opinion must be provided to the office upon
 230 request. This paragraph does not apply to life insurance, health
 231 insurance, or title insurance.

232 2. An actuarial opinion summary written by the insurer's

597-03485-13

2013836c1

233 appointed actuary. The summary must be filed in accordance with
 234 the appropriate National Association of Insurance Commissioners
 235 property and casualty annual statement instructions. Proprietary
 236 business information contained in the summary is confidential
 237 and exempt under s. 624.4212, and the summary and related
 238 information are not subject to subpoena or discovery or
 239 admissible in evidence in any private civil action. Neither the
 240 office nor any person who received documents, materials, or any
 241 other information while acting under the authority of the office
 242 or with whom such information is shared pursuant to s. 624.4212
 243 may testify in a private civil action concerning such
 244 confidential information. A waiver of any other applicable claim
 245 of confidentiality or privilege may not occur as a result of a
 246 disclosure to the office under this section or any other section
 247 of the insurance code. This paragraph does not apply to life and
 248 health insurers subject to s. 625.121(3).

249 (c) The commission may by rule require reports or filings
 250 required under the insurance code to be submitted by electronic
 251 means in a computer-readable form compatible with the electronic
 252 data processing equipment specified by the commission.

253 (8)

254 (e) The commission shall adopt rules to administer
 255 ~~implement~~ this subsection, which rules must be in substantial
 256 conformity with the 2006 Annual Financial Reporting Model
 257 Regulation 1998 Model Rule requiring annual audited financial
 258 ~~reports~~ adopted by the National Association of Insurance
 259 Commissioners or subsequent amendments, except where
 260 inconsistent with the requirements of this subsection. Any
 261 exception to, waiver of, or interpretation of accounting

597-03485-13

2013836c1

262 requirements of the commission must be in writing and signed by
 263 an authorized representative of the office. An ~~no~~ insurer may
 264 not raise as a defense in any action, any exception to, waiver
 265 of, or interpretation of accounting requirements as a defense in
 266 an action, unless previously issued in writing by an authorized
 267 representative of the office.

268 Section 4. Paragraphs (a) and (b) of subsection (3) of
 269 section 625.121, Florida Statutes, are amended to read:

270 625.121 Standard Valuation Law; life insurance.—

271 (3) ACTUARIAL OPINION OF RESERVES.—

272 (a)~~1-~~ Each life insurance company doing business in this
 273 state shall annually submit the opinion of a qualified actuary
 274 as to whether the reserves and related actuarial items held in
 275 support of the policies and contracts specified by the
 276 commission by rule are computed appropriately, are based on
 277 assumptions that ~~which~~ satisfy contractual provisions, are
 278 consistent with prior reported amounts, and comply with
 279 applicable laws of this state. The commission by rule shall
 280 define the specifics of this opinion and add any other items
 281 determined to be necessary to its scope.

282 ~~1.2-~~ The opinion shall be submitted with the annual
 283 statement reflecting the valuation of such reserve liabilities
 284 ~~for each year ending on or after December 31, 1992.~~

285 ~~2.3-~~ The opinion applies ~~shall apply~~ to all business in
 286 force, including individual and group health insurance plans, in
 287 the form and substance acceptable to the office as specified by
 288 rule of the commission.

289 ~~3.4-~~ The commission may adopt rules providing the standards
 290 of the actuarial opinion consistent with standards adopted by

597-03485-13 2013836c1

291 the Actuarial Standards Board on December 31, 2002, and
 292 subsequent revisions thereto, ~~if provided that~~ the standards
 293 remain substantially consistent.

294 ~~4.5. In the case of an opinion required to be submitted by~~
 295 ~~a foreign or alien company,~~ The office may accept an the opinion
 296 filed by a foreign or alien ~~that~~ company with the insurance
 297 supervisory official of another state if the office determines
 298 that the opinion reasonably meets the requirements applicable to
 299 a company domiciled in this state.

300 ~~5.6. As used in For the purposes of~~ this subsection, the
 301 term "qualified actuary" means a member in good standing of the
 302 American Academy of Actuaries who also meets the requirements
 303 specified by rule of the commission.

304 ~~6.7.~~ Disciplinary action by the office against the company
 305 or the qualified actuary shall be in accordance with the
 306 insurance code and related rules adopted by the commission.

307 ~~7.8.~~ A memorandum in the form and substance specified by
 308 rule shall be prepared to support each actuarial opinion.

309 ~~8.9.~~ If the insurance company fails to provide a supporting
 310 memorandum at the request of the office within a period
 311 specified by rule of the commission, or if the office determines
 312 that the supporting memorandum provided by the insurance company
 313 fails to meet the standards prescribed by rule of the
 314 commission, the office may engage a qualified actuary at the
 315 expense of the company to review the opinion and the basis for
 316 the opinion and prepare such supporting memorandum as ~~is~~
 317 required by the office.

318 ~~9.10.~~ Except as otherwise provided in this paragraph, any
 319 memorandum or other material in support of the opinion is

597-03485-13 2013836c1

320 confidential and exempt from ~~the provisions of~~ s. 119.07(1) and
 321 is not subject to subpoena or discovery or admissible in
 322 evidence in any private civil action; however, the memorandum or
 323 other material may be released by the office with the written
 324 consent of the company, or to the American Academy of Actuaries
 325 upon request stating that the memorandum or other material is
 326 required for the purpose of professional disciplinary
 327 proceedings and setting forth procedures satisfactory to the
 328 office for preserving the confidentiality of the memorandum or
 329 other material. If any portion of the confidential memorandum is
 330 cited by the company in its marketing, ~~or~~ is cited before any
 331 governmental agency other than a state insurance department, or
 332 is released by the company to the news media, no portion of the
 333 memorandum is confidential. Neither the office nor any person
 334 who received documents, materials, or any other information
 335 while acting under the authority of the office or with whom such
 336 information is shared pursuant to this paragraph may testify in
 337 any private civil action concerning the confidential documents,
 338 materials, or information. A waiver of any applicable privilege
 339 or claim of confidentiality in the documents, materials, or
 340 information may not occur as a result of disclosure to the
 341 office under this section or any other section of the insurance
 342 code, or as a result of sharing as authorized under s. 624.4212.

343 (b) In addition to the opinion required by paragraph (a)
 344 ~~subparagraph (a)1.~~, the office may, pursuant to commission rule,
 345 require an opinion of the same qualified actuary as to whether
 346 the reserves and related actuarial items held in support of the
 347 policies and contracts specified by the commission by rule, when
 348 considered in light of the assets held by the company with

597-03485-13 2013836c1
 349 respect to the reserves and related actuarial items, including,
 350 but not limited to, the investment earnings on the assets and
 351 considerations anticipated to be received and retained under the
 352 policies and contracts, make adequate provision for the
 353 company's obligations under the policies and contracts,
 354 including, but not limited to, the benefits under, and expenses
 355 associated with, the policies and contracts.

356 Section 5. Subsections (1), (3), (10), (12), and (13) of
 357 section 628.461, Florida Statutes, are amended to read:

358 628.461 Acquisition of controlling stock.—

359 (1) A person may not, individually or in conjunction with
 360 any affiliated person of such person, acquire directly or
 361 indirectly, conclude a tender offer or exchange offer for, enter
 362 into any agreement to exchange securities for, or otherwise
 363 finally acquire 10 ~~5~~ percent or more of the outstanding voting
 364 securities of a domestic stock insurer or of a controlling
 365 company, unless:

366 (a) The person or affiliated person has filed with the
 367 office and sent to the insurer and controlling company a letter
 368 of notification regarding the transaction or proposed
 369 transaction within ~~no later than~~ 5 days after any form of tender
 370 offer or exchange offer is proposed, or within ~~no later than~~ 5
 371 days after the acquisition of the securities if no tender offer
 372 or exchange offer is involved. The notification must be provided
 373 on forms prescribed by the commission containing information
 374 determined necessary to understand the transaction and identify
 375 all purchasers and owners involved;

376 (b) The person or affiliated person has filed with the
 377 office the ~~a~~ statement as specified in subsection (3). The

597-03485-13 2013836c1
 378 statement must be completed and filed within 30 days after:
 379 1. Any definitive acquisition agreement is entered;
 380 2. Any form of tender offer or exchange offer is proposed;
 381 or
 382 3. The acquisition of the securities, if no definitive
 383 acquisition agreement, tender offer, or exchange offer is
 384 involved; and
 385 (c) The office has approved the tender or exchange offer,
 386 or acquisition if no tender offer or exchange offer is involved,
 387 and approval is in effect.

388
 389 ~~In lieu of a filing as required under this subsection, a~~
 390 ~~party acquiring less than 10 percent of the outstanding voting~~
 391 ~~securities of an insurer may file a disclaimer of affiliation~~
 392 ~~and control. The disclaimer shall fully disclose all material~~
 393 ~~relationships and basis for affiliation between the person and~~
 394 ~~the insurer as well as the basis for disclaiming the affiliation~~
 395 ~~and control. After a disclaimer has been filed, the insurer~~
 396 ~~shall be relieved of any duty to register or report under this~~
 397 ~~section which may arise out of the insurer's relationship with~~
 398 ~~the person unless and until the office disallows the disclaimer.~~
 399 ~~The office shall disallow a disclaimer only after furnishing all~~
 400 ~~parties in interest with notice and opportunity to be heard and~~
 401 ~~after making specific findings of fact to support the~~
 402 ~~disallowance.~~ A filing ~~as~~ required under this subsection must be
 403 made for ~~as to~~ any acquisition that equals or exceeds 10 percent
 404 of the outstanding voting securities.

405 (3) The statement to be filed with the office under
 406 subsection (1) and furnished to the insurer and controlling

597-03485-13 2013836c1

407 company ~~must shall~~ contain all the following information and any
 408 additional information that ~~as~~ the office deems necessary to
 409 determine the character, experience, ability, and other
 410 qualifications of the person or affiliated person of such person
 411 for the protection of the policyholders and shareholders of the
 412 insurer and the public:

413 (a) The identity of, and the background information
 414 specified in subsection (4) on, each natural person by whom, or
 415 on whose behalf, the acquisition is to be made; and, if the
 416 acquisition is to be made by, or on behalf of, a corporation,
 417 association, or trust, as to the corporation, association, or
 418 trust and as to any person who controls, ~~either~~ directly or
 419 indirectly, the corporation, association, or trust, the identity
 420 of, and the background information specified in subsection (4)
 421 on, each director, officer, trustee, or other natural person
 422 performing duties similar to those of a director, officer, or
 423 trustee for the corporation, association, or trust.†

424 (b) The source and amount of the funds or other
 425 consideration used, or to be used, in making the acquisition.†

426 (c) Any plans or proposals that ~~which~~ such persons may have
 427 made to liquidate such insurer, to sell any of its assets or
 428 merge or consolidate it with any person, or to make any other
 429 major change in its business or corporate structure or
 430 management; and any plans or proposals that ~~which~~ such persons
 431 may have made to liquidate any controlling company of such
 432 insurer, to sell any of its assets or merge or consolidate it
 433 with any person, or to make any other major change in its
 434 business or corporate structure or management.†

435 (d) The number of shares or other securities that ~~which~~ the

Page 15 of 25

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597-03485-13 2013836c1

436 person or affiliated person of such person proposes to acquire,
 437 the terms of the proposed acquisition, and the manner in which
 438 the securities are to be acquired, ~~and~~

439 (e) Information as to any contract, arrangement, or
 440 understanding with any party with respect to any of the
 441 securities of the insurer or controlling company, including, but
 442 not limited to, information relating to the transfer of any of
 443 the securities, option arrangements, puts or calls, or the
 444 giving or withholding of proxies, which information names the
 445 party with whom the contract, arrangement, or understanding has
 446 been entered into and gives the details thereof.

447 (f) An agreement by the person required to file the
 448 statement that the person will provide the annual report
 449 specified in s. 628.801(2) if control exists.

450 (g) An acknowledgement by the person required to file the
 451 statement that the person and all subsidiaries within the
 452 person's control in the insurance holding company system will
 453 provide, as necessary, information to the office upon request to
 454 evaluate enterprise risk to the insurer.

455 (10) Upon notification to the office by the domestic stock
 456 insurer or a controlling company that any person or any
 457 affiliated person of such person has acquired 10 ~~5~~ percent or
 458 more of the outstanding voting securities of the domestic stock
 459 insurer or controlling company without complying with the
 460 provisions of this section, the office shall order that the
 461 person and any affiliated person of such person cease
 462 acquisition of any further securities of the domestic stock
 463 insurer or controlling company; however, the person or any
 464 affiliated person of such person may request a proceeding, which

Page 16 of 25

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597-03485-13 2013836c1

465 proceeding shall be convened within 7 days after the rendering
 466 of the order for the sole purpose of determining whether the
 467 person, individually or in connection with any affiliated person
 468 of such person, has acquired 10 ~~5~~ percent or more of the
 469 outstanding voting securities of a domestic stock insurer or
 470 controlling company. Upon the failure of the person or
 471 affiliated person to request a hearing within 7 days, or upon a
 472 determination at a hearing convened pursuant to this subsection
 473 that the person or affiliated person has acquired voting
 474 securities of a domestic stock insurer or controlling company in
 475 violation of this section, the office may order the person and
 476 affiliated person to divest themselves of any voting securities
 477 so acquired.

478 (12) (a) A presumption of control may be rebutted by filing
 479 a disclaimer of control. Any person may file a disclaimer of
 480 control with the office. The disclaimer must fully disclose all
 481 material relationships and bases for affiliation between the
 482 person and the insurer as well as the basis for disclaiming the
 483 affiliation. After a disclaimer has been filed, the insurer is
 484 relieved of any duty to register or report under this section
 485 that may arise out of the insurer's relationship with the person
 486 unless the office disallows the disclaimer.

487 (b) Any controlling person of a domestic insurer who seeks
 488 to divest the person's controlling interest in the domestic
 489 insurer in any manner shall file with the office, with a copy to
 490 the insurer, confidential notice, not subject to public
 491 inspection as provided under s. 624.4212, of the person's
 492 proposed divestiture at least 30 days before the cessation of
 493 control. The office shall determine those instances in which the

Page 17 of 25

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597-03485-13 2013836c1

494 party seeking to divest or to acquire a controlling interest in
 495 an insurer must file for and obtain approval of the transaction.
 496 The information remains confidential until the conclusion of the
 497 transaction unless the office, in its discretion, determines
 498 that confidential treatment interferes with enforcement of this
 499 section. If the statement referred to in subsection (1) is
 500 otherwise filed, this paragraph does not apply. For the purpose
 501 of this section, the term "affiliated person" of another person
 502 means:

- 503 ~~1. The spouse of such other person;~~
- 504 ~~2. The parents of such other person and their lineal~~
 505 ~~descendants and the parents of such other person's spouse and~~
 506 ~~their lineal descendants;~~
- 507 ~~3. Any person who directly or indirectly owns or controls,~~
 508 ~~or holds with power to vote, 5 percent or more of the~~
 509 ~~outstanding voting securities of such other person;~~
- 510 ~~4. Any person 5 percent or more of the outstanding voting~~
 511 ~~securities of which are directly or indirectly owned or~~
 512 ~~controlled, or held with power to vote, by such other person;~~
- 513 ~~5. Any person or group of persons who directly or~~
 514 ~~indirectly control, are controlled by, or are under common~~
 515 ~~control with such other person;~~
- 516 ~~6. Any officer, director, partner, copartner, or employee~~
 517 ~~of such other person;~~
- 518 ~~7. If such other person is an investment company, any~~
 519 ~~investment adviser of such company or any member of an advisory~~
 520 ~~board of such company;~~
- 521 ~~8. If such other person is an unincorporated investment~~
 522 ~~company not having a board of directors, the depositor of such~~

Page 18 of 25

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597-03485-13

2013836c1

523 ~~company, or~~

524 ~~9. Any person who has entered into an agreement, written or~~
 525 ~~unwritten, to act in concert with such other person in acquiring~~
 526 ~~or limiting the disposition of securities of a domestic stock~~
 527 ~~insurer or controlling company.~~

528 ~~(c) (b)~~ For the purposes of this section, the term
 529 "controlling company" means any corporation, trust, or
 530 association owning, directly or indirectly, 25 percent or more
 531 of the voting securities of one or more domestic stock insurance
 532 companies.

533 (13) The commission may adopt, amend, or repeal rules that
 534 are necessary to administer ~~implement the provisions of this~~
 535 ~~section, pursuant to chapter 120.~~

536 Section 6. Section 628.801, Florida Statutes, is amended to
 537 read:

538 628.801 Insurance holding companies; registration;
 539 regulation.—

540 (1) An ~~Every~~ insurer that is authorized to do business in
 541 this state and that is a member of an insurance holding company
 542 shall, on or before April 1 of each year, register with the
 543 office and file a registration statement and be subject to
 544 regulation with respect to its relationship to the holding
 545 company as provided by law or rule ~~or statute~~. The commission
 546 shall adopt rules establishing the information and statement
 547 form required for registration and the manner in which
 548 registered insurers and their affiliates are regulated. The
 549 rules apply to domestic insurers, foreign insurers, and
 550 commercially domiciled insurers, except for a foreign insurer
 551 domiciled in states that ~~were~~ are accredited by the National

597-03485-13

2013836c1

552 Association of Insurance Commissioners by December 31, 1995.

553 Except to the extent of any conflict with this code, the rules
 554 must include all requirements and standards of ss. 4 and 5 of
 555 the Insurance Holding Company System Regulatory Act and the
 556 Insurance Holding Company System Model Regulation of the
 557 National Association of Insurance Commissioners, as adopted on
 558 December 2010. The commission may adopt subsequent amendments
 559 thereto if the methodology remains substantially consistent. The
 560 rules Regulatory Act and the Model Regulation existed on
 561 November 30, 2001, and may include a prohibition on oral
 562 contracts between affiliated entities. Material transactions
 563 between an insurer and its affiliates shall be filed with the
 564 office as provided by rule Upon request, the office may waive
 565 filing requirements under this section for a domestic insurer
 566 that is the subsidiary of an insurer that is in full compliance
 567 with the insurance holding company registration laws of its
 568 state of domicile, which state is accredited by the National
 569 Association of Insurance Commissioners.

570 (2) The ultimate controlling person of every insurer
 571 subject to registration must also file an annual enterprise risk
 572 report on or before April 1. As used in this subsection, the
 573 term "ultimate controlling person" means a person who is not
 574 controlled by any other person. The report, to the best of the
 575 ultimate controlling person's knowledge and belief, must
 576 identify the material risks within the insurance holding company
 577 system that could pose enterprise risk to the insurer. The
 578 report shall be filed with the lead state office of the
 579 insurance holding company system as determined by the procedures
 580 within the Financial Analysis Handbook adopted by the National

597-03485-13 2013836c1

581 Association of Insurance Commissioners and is confidential and
 582 exempt from public disclosure as provided in s. 624.4212.

583 (a) An insurer may satisfy this requirement by providing
 584 the office with the most recently filed parent corporation
 585 reports that have been filed with the Securities and Exchange
 586 Commission which provide the appropriate enterprise risk
 587 information.

588 (b) The term "enterprise risk" means any activity,
 589 circumstance, event, or series of events involving one or more
 590 affiliates of an insurer which, if not remedied promptly, is
 591 likely to have a materially adverse effect upon the financial
 592 condition or liquidity of the insurer or its insurance holding
 593 company system as a whole, including anything that would cause
 594 the insurer's risk-based capital to fall into company action
 595 level as set forth in s. 624.4085 or would cause the insurer to
 596 be in hazardous financial condition.

597 (3) Pursuant to chapter 624 relating to the examination of
 598 insurers, the office may examine any insurer registered under
 599 this section and its affiliates to ascertain the financial
 600 condition of the insurer, including the enterprise risk to the
 601 insurer by the ultimate controlling party, or by any entity or
 602 combination of entities within the insurance holding company
 603 system, or by the insurance holding company system on a
 604 consolidated basis.

605 (4) The filings and related documents filed pursuant to
 606 this section are confidential and exempt as provided in s.
 607 624.4212 and are not subject to subpoena or discovery, or
 608 admissible in evidence in any private civil action. A waiver of
 609 any applicable privilege or claim of confidentiality in the

597-03485-13 2013836c1

610 filings and related documents may not occur as a result of any
 611 disclosure to the office under this section or any other section
 612 of the insurance code as authorized under s. 624.4212. Neither
 613 the office nor any person who received the filings and related
 614 documents while acting under the authority of the office or with
 615 whom such information is shared pursuant to s. 624.4212 is
 616 permitted or required to testify in any private civil action
 617 concerning any confidential documents, materials, or information
 618 subject to s. 624.4212.

619 (5) The failure to file a registration statement, or a
 620 summary of the registration statement, or the enterprise risk
 621 filing report required by this section within the time specified
 622 for filing is a violation of this section.

623 (6) Upon request, the office may waive the filing
 624 requirements of this section:

625 (a) If the insurer is a domestic insurer that is the
 626 subsidiary of an insurer that is in full compliance with the
 627 insurance holding company registration laws of its state of
 628 domicile, which state is accredited by the National Association
 629 of Insurance Commissioners; or

630 (b) If the insurer is a domestic insurer that writes only
 631 in this state and has annual direct written and assumed premium
 632 of less than \$300 million, excluding premiums reinsured with the
 633 Federal Crop Insurance Corporation and Federal Flood Program,
 634 and demonstrates that compliance with this section would not
 635 provide substantial regulatory or consumer benefit. In
 636 evaluating a waiver request made under this paragraph, the
 637 office may consider various factors including, but not limited
 638 to, the type of business entity, the volume of business written,

597-03485-13 2013836c1

639 the ownership or organizational structure of the entity, or
 640 whether the company is in run-off.

641
 642 A waiver granted pursuant to this subsection is valid for 2
 643 years unless sooner withdrawn due to a change in the
 644 circumstances under which the waiver was granted.

645 Section 7. Subsection (4) of section 628.803, Florida
 646 Statutes, is renumbered as subsection (5), and a new subsection
 647 (4) is added to that section to read:

648 628.803 Sanctions.—

649 (4) If the office determines that any person committed a
 650 violation of s. 628.461 or s. 628.801, the violation may serve
 651 as an independent basis for disapproving dividends or
 652 distributions and for placing the insurer under an order of
 653 supervision in accordance with part VI of chapter 624.

654 Section 8. Section 628.805, Florida Statutes, is created to
 655 read:

656 628.805 Supervisory colleges.—In order to assess the
 657 business strategy, financial position, legal and regulatory
 658 position, risk exposure, risk management, and governance
 659 processes, and as part of the examination of individual insurers
 660 in accordance with ss. 628.801 and 624.316, the office may
 661 participate in a supervisory college with other regulators
 662 charged with supervision of the insurer or its affiliates,
 663 including other state, federal, and international regulatory
 664 agencies. In accordance with s. 624.4212 regarding confidential
 665 information sharing, the office may enter into agreements that
 666 provide the basis for cooperation between the office and the
 667 other regulatory agencies and the activities of the supervisory

597-03485-13 2013836c1

668 college. This section does not delegate to the supervisory
 669 college the office's authority to regulate or supervise the
 670 insurer or its affiliates under its jurisdiction.

671 (1) With respect to participation in a supervisory college,
 672 the office may:

673 (a) Initiate the establishment of a supervisory college.

674 (b) Clarify the membership and participation of other
 675 supervisors in the supervisory college.

676 (c) Clarify the functions of the supervisory college and
 677 the role of other regulators, including the establishment of a
 678 group-wide supervisor.

679 (d) Coordinate the ongoing activities of the supervisory
 680 college, including planning meetings, supervisory activities,
 681 and processes for information sharing.

682 (e) Establish a crisis management plan.

683 (2) With respect to an insurer registered under s. 628.801,
 684 and in accordance with this section, the office may participate
 685 in a supervisory college for any domestic insurer that is part
 686 of an insurance holding company system that has international
 687 operations in order to determine the insurer's compliance with
 688 this chapter.

689 (3) Each registered insurer subject to this section is
 690 liable for and shall pay reasonable expenses for the office's
 691 participation in a supervisory college, including reasonable
 692 travel expenses. A supervisory college may be convened as a
 693 temporary or permanent forum for communication and cooperation
 694 between the regulators charged with the supervision of the
 695 insurer or its affiliates, and the office may impose a regular
 696 assessment on the insurer for the payment of these expenses.

597-03485-13 2013836c1

697 Section 9. Subsection (3) is added to section 636.045,
698 Florida Statutes, to read:

699 636.045 Minimum surplus requirements.—

700 (3) A prepaid limited health service organization that is
701 authorized in this state and one or more other states,
702 jurisdictions, or countries is subject to ss. 624.4085 and
703 624.40851.

704 Section 10. Subsection (7) is added to section 641.225,
705 Florida Statutes, to read:

706 641.225 Surplus requirements.—

707 (7) A health maintenance organization that is authorized in
708 this state and one or more other states, jurisdictions, or
709 countries is subject to ss. 624.4085 and 624.40851.

710 Section 11. Subsection (3) is added to section 641.255,
711 Florida Statutes, to read:

712 641.255 Acquisition, merger, or consolidation.—

713 (3) A health maintenance organization that is a member of a
714 holding company system is subject to s. 628.461 but not s.
715 628.4615.

716 Section 12. This act shall take effect October 1, 2013, if
717 SB 834 or similar legislation is adopted in the same legislative
718 session or an extension thereof and becomes law.



The Florida Senate

Committee Agenda Request

RECEIVED

APR 16 2013

SENATE
RULES COMMITTEE

To: Senator John Thrasher, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: April 15, 2013

I respectfully request that **Senate Bill 836**, relating to Insurer Solvency, be placed on the:

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

A handwritten signature in black ink, appearing to read "David Simmons".

Senator David Simmons
Florida Senate, District 10

THE FLORIDA SENATE
APPEARANCE RECORD

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

Y 122/2013

Meeting Date

Topic _____

Bill Number 836
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

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)

4/22/13

Meeting Date

Topic Insurer Solvency

Bill Number SB 836
(if applicable)

Name Ashlee Falco

Amendment Barcode _____
(if applicable)

Job Title Gov't Affairs Coordinator

Address 200 E. Gaines St., Ste. 121

Phone (850) 413-5069

Tallahassee, FL 32399
City State Zip

E-mail ashlee.falco@floriv.com

Speaking: For Against Information

Representing Office of Insurance Regulation (OIR)

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)

4/22/13

Meeting Date

Topic Insurer Solvency

Bill Number SB 836
(if applicable)

Name Steve Fredrickson

Amendment Barcode _____
(if applicable)

Job Title Senior Attorney

Address 2005 E. Gaines St., Ste. 601

Phone (850) 413-4144

Street
Tallahassee, FL 32399
City State Zip

E-mail steve.fredrickson@flsr.com

Speaking: For Against Information

Representing Office of Insurance Regulation (OIR)

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
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 924

INTRODUCER: Senator Latvala

SUBJECT: Dentists

DATE: April 19, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	Favorable
2.	Burgess	Burgess	BI	Favorable
3.	Betta	Hansen	AP	Favorable
4.	Looke	Phelps	RC	Favorable
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 924 prohibits an insurer, health maintenance organization (HMO), or prepaid limited health service organization from contracting with a licensed dentist to provide services to an insured or subscriber at a specified fee unless such services are “covered services” under the applicable contract. The bill prohibits an insurer, HMO, or prepaid limited health services organization from requiring that a contracted dentist participate in a discount medical plan. The bill also prohibits an insurer from requiring that a contracted health care provider accept the terms of other practitioner contracts with a prepaid limited health service organization that is under common management and control with the contracting insurer.

According to the Office of Insurance Regulation (OIR), there is no fiscal impact to implement the provisions of the bill.

This bill substantially amends the following sections of the Florida Statutes: 627.6474, 636.035, and 641.315.

II. Present Situation:

Prohibition Against “All Products” Clauses in Health Care Provider Contracts

Section 627.6474, F.S., prohibits a health insurer from requiring that a contracted health care practitioner accept the terms of other practitioner contracts (including Medicare and Medicaid practitioner contracts) with the insurer or with another insurer, HMO, preferred provider organization, or exclusive provider organization that is under common management and control with the contracting insurer. The statute exempts practitioners in group practices who must

accept the contract terms negotiated by the group. These contractual provisions are referred to as “all products” clauses, and, before being prohibited by the 2001 Legislature, typically required the health care provider, as a condition of participating in any of the health plan products, to participate in *all* of the health plan’s current or future health plan products. The 2001 Legislature outlawed “all products” clauses after concerns were raised by physicians that the clauses:

- May force providers to render services at below market rates;
- Harm consumers through suppressed market competition;
- May require physicians to accept future contracts with unknown and unpredictable business risk; and
- May unfairly keep competing health plans out of the marketplace.

Prepaid Limited Health Service Organizations Contracts

Prepaid limited health service organizations (PLHSO) provide limited health services to enrollees through an exclusive panel of providers in exchange for a prepayment, and are authorized in ch. 636, F.S. Limited health services are ambulance services, dental care services, vision care services, mental health services, substance abuse services, chiropractic services, podiatric care services, and pharmaceutical services.¹ Provider arrangements for prepaid limited health service organizations are authorized in s. 636.035, F.S., and must comply with the requirements in that section.

Health Maintenance Organization Provider Contracts

An HMO is an organization that provides a wide range of health care services, including emergency care, inpatient hospital care, physician care, ambulatory diagnostic treatment and preventive health care pursuant to contractual arrangements with preferred providers in a designated service area.² Traditionally, an HMO member must use the HMO’s network of health care providers in order for the HMO to make payment of benefits. The use of a health care provider outside the HMO’s network generally results in the HMO limiting or denying the payment of benefits for the out-of-network services rendered to the member. Section 641.315, F.S., specifies requirements for the HMO provider contracts with providers of health care services.

Discount Medical Plan Organizations

Discount medical plan organizations (DMPOs)³ offer a variety of health care services to consumers at a discounted rate. These plans are not health insurance and therefore do not pay for services on behalf of members; instead, the plans offer members access to specific health care products and services at a discounted fee. These health products and services may include, but are not limited to, dental services, emergency services, mental health services, vision care, chiropractic services, and hearing care. Generally, a DMPO has a contract with a provider network under which the individual providers render the medical services at a discount.

¹ S. 636.003(5), F.S.

² S. 641.19(12), F.S.

³ S. 636.202(2), F.S.

The DMPOs are regulated by the Office of Insurance Regulation (OIR) under part II of ch. 636, F.S. That statute establishes licensure requirements, annual reporting, minimum capital requirements, authority for examinations and investigations, marketing restrictions, prohibited activities, and criminal penalties, among other regulations.

Before transacting business in Florida, a DMPO must be incorporated and possess a license as a DMPO.⁴ As a condition of licensure, each DMPO must maintain a net worth requirement of \$150,000.⁵ All charges to members of such plans must be filed with OIR and any charge to members greater than \$30 per month or \$360 per year must be approved by OIR before the charges can be used by the plan.⁶ All forms used by the organization must be filed with and approved by OIR.

III. Effect of Proposed Changes:

Inclusion of PLHSOs in Prohibition Against “All Products” Health Care Provider Contracts

Under current law, a health insurer cannot require that a contracted health care practitioner accept the terms of other practitioner contracts (including Medicare and Medicaid practitioner contracts) with the insurer or with an insurer, HMO, preferred provider organization, or exclusive provider organization that is under common management and control with the contracting insurer. The bill adds to that list by prohibiting the insurer from requiring that a contracted health care provider accept the terms of other practitioner contracts with a PLHSO that is under common management and control with the contracting insurer.

Dentist Provider Contracts: Prohibition Against Specifying Fees for Non-Covered Services

The bill prohibits insurers, HMOs, and PLHSOs from executing a contract with a licensed dentist that requires the dentist to provide services to an insured or subscriber at a specified fee unless such services are “covered services” under the applicable contract. “Covered services” are defined as those services that are listed as a benefit that the subscriber is entitled to receive under the contract. This will prevent contracts between dentists and insurers, HMOs, or PLHSOs from containing provisions that subject non-covered services to negotiated payment rates.

The bill also prohibits insurers, HMOs and PLHSOs from providing merely de minimis reimbursement or coverage to avoid the requirements of the bill. The bill requires that fees for covered services must be set in good faith and cannot be nominal.

The bill prohibits insurers, HMOs, and PLHSOs from requiring that a contracted dentist participate in a DMPO.

⁴ S. 636.204, F.S.

⁵ S. 636.220, F.S.

⁶ S. 636.216(1), F.S.

The bill also addresses the criminal penalty specified in s. 624.15, F.S.,^{7,8} by limiting the exemption from the criminal penalty currently contained in s. 627.6474, F.S., to subsection (1) of s. 627.6474, F.S. The provisions of subsection (2) of s. 627.6474, F.S., as created by the bill, are not specifically exempted from the criminal penalty. This leaves the current law exemption in place for the amended statutory provisions to which it currently applies, without applying the exemption to the bill's new provisions in subsection (2).

The bill provides an effective date of July 1, 2013, and the provisions in the bill apply to contracts entered into or renewed on or after that date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 924 may have a negative fiscal impact on health insurer, HMO, and PLHSO policyholders and subscribers who may pay higher costs for dental care if the Legislature prohibits these entities from contracting with dentists to provide services that are not covered at a negotiated fee.

⁷ Section 624.15, F.S., provides that, unless a greater specific penalty is provided by another provision of the Insurance Code or other applicable law or rule of the state, each willful violation of the Insurance Code is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, F.S., and that each instance of such violation shall be considered a separate offense.

⁸ Section 775.082, F.S., provides that a person convicted of a misdemeanor of the second degree may be sentenced to a term of imprisonment not exceeding 60 days. Section 775.083, F.S., provides that a person convicted of a misdemeanor of the second degree may be sentenced to pay a fine not exceeding \$500 plus court costs.

The bill may have a positive fiscal impact on dentists who may be able to benefit from increased payments from insurers, HMOs, and PLHSOs due to the contract restrictions in this bill.

C. Government Sector Impact:

According to an OIR analysis on a 2011 similar bill,⁹ implementing the provisions of this bill will have no fiscal impact. In addition, there should be no direct impact on the costs that the state incurs for the state employees' Preferred Provider Organization, (PPO) or the HMO Plans. However, members of the state dental coverage plans could be affected if dentists have the ability to bill and charge amounts above contracted rates when members are financially responsible for the service in question.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

⁹ SB 546

By Senator Latvala

20-00157A-13

2013924__

1 A bill to be entitled
 2 An act relating to dentists; amending s. 627.6474,
 3 F.S.; prohibiting a contract between a health insurer
 4 and a dentist from requiring the dentist to provide
 5 services at a fee set by the insurer under certain
 6 circumstances; providing that covered services are
 7 those services listed as a benefit that the insured is
 8 entitled to receive under a contract; prohibiting an
 9 insurer from providing merely de minimis reimbursement
 10 or coverage; requiring that fees for covered services
 11 be set in good faith and not be nominal; prohibiting a
 12 health insurer from requiring as a condition of a
 13 contract that a dentist participate in a discount
 14 medical plan; amending s. 636.035, F.S.; prohibiting a
 15 contract between a prepaid limited health service
 16 organization and a dentist from requiring the dentist
 17 to provide services at a fee set by the organization
 18 under certain circumstances; providing that covered
 19 services are those services listed as a benefit that a
 20 subscriber of a prepaid limited health service
 21 organization is entitled to receive under a contract;
 22 prohibiting a prepaid limited health service
 23 organization from providing merely de minimis
 24 reimbursement or coverage; requiring that fees for
 25 covered services be set in good faith and not be
 26 nominal; prohibiting the prepaid limited health
 27 service organization from requiring as a condition of
 28 a contract that a dentist participate in a discount
 29 medical plan; amending s. 641.315, F.S.; prohibiting a

Page 1 of 5

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

20-00157A-13

2013924__

30 contract between a health maintenance organization and
 31 a dentist from requiring the dentist to provide
 32 services at a fee set by the organization under
 33 certain circumstances; providing that covered services
 34 are those services listed as a benefit that a
 35 subscriber of a health maintenance organization is
 36 entitled to receive under a contract; prohibiting a
 37 health maintenance organization from providing merely
 38 de minimis reimbursement or coverage; requiring that
 39 fees for covered services be set in good faith and not
 40 be nominal; prohibiting the health maintenance
 41 organization from requiring as a condition of a
 42 contract that a dentist participate in a discount
 43 medical plan; providing for application of the act;
 44 providing an effective date.
 45
 46 Be It Enacted by the Legislature of the State of Florida:
 47
 48 Section 1. Section 627.6474, Florida Statutes, is amended
 49 to read:
 50 627.6474 Provider contracts.—
 51 (1) A health insurer ~~may shall~~ not require a contracted
 52 health care practitioner as defined in s. 456.001(4) to accept
 53 the terms of other health care practitioner contracts with the
 54 insurer or any other insurer, or health maintenance
 55 organization, under common management and control with the
 56 insurer, including Medicare and Medicaid practitioner contracts
 57 and those authorized by s. 627.6471, s. 627.6472, s. 636.035, or
 58 s. 641.315, except for a practitioner in a group practice as

Page 2 of 5

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20-00157A-13

2013924

59 defined in s. 456.053 who must accept the terms of a contract
60 negotiated for the practitioner by the group, as a condition of
61 continuation or renewal of the contract. Any contract provision
62 that violates this section is void. A violation of this
63 ~~subsection section~~ is not subject to the criminal penalty
64 specified in s. 624.15.

65 (2) (a) A contract between a health insurer and a dentist
66 licensed under chapter 466 for the provision of services to an
67 insured may not contain any provision that requires the dentist
68 to provide services to the insured under such contract at a fee
69 set by the health insurer unless such services are covered
70 services under the applicable contract.

71 (b) Covered services are those services that are listed as
72 a benefit that the insured is entitled to receive under the
73 contract. An insurer may not provide merely de minimis
74 reimbursement or coverage in order to avoid the requirements of
75 this section. Fees for covered services shall be set in good
76 faith and must not be nominal.

77 (c) A health insurer may not require as a condition of the
78 contract that the dentist participate in a discount medical plan
79 under part II of chapter 636.

80 Section 2. Subsection (13) is added to section 636.035,
81 Florida Statutes, to read:

82 636.035 Provider arrangements.—

83 (13) (a) A contract between a prepaid limited health service
84 organization and a dentist licensed under chapter 466 for the
85 provision of services to a subscriber of the prepaid limited
86 health service organization may not contain any provision that
87 requires the dentist to provide services to the subscriber of

20-00157A-13

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88 the prepaid limited health service organization at a fee set by
89 the prepaid limited health service organization unless such
90 services are covered services under the applicable contract.

91 (b) Covered services are those services that are listed as
92 a benefit that the subscriber is entitled to receive under the
93 contract. A prepaid limited health service organization may not
94 provide merely de minimis reimbursement or coverage in order to
95 avoid the requirements of this section. Fees for covered
96 services shall be set in good faith and must not be nominal.

97 (c) A prepaid limited health service organization may not
98 require as a condition of the contract that the dentist
99 participate in a discount medical plan under part II of this
100 chapter.

101 Section 3. Subsection (11) is added to section 641.315,
102 Florida Statutes, to read:

103 641.315 Provider contracts.—

104 (11) (a) A contract between a health maintenance
105 organization and a dentist licensed under chapter 466 for the
106 provision of services to a subscriber of the health maintenance
107 organization may not contain any provision that requires the
108 dentist to provide services to the subscriber of the health
109 maintenance organization at a fee set by the health maintenance
110 organization unless such services are covered services under the
111 applicable contract.

112 (b) Covered services are those services that are listed as
113 a benefit that the subscriber is entitled to receive under the
114 contract. A health maintenance organization may not provide
115 merely de minimis reimbursement or coverage in order to avoid
116 the requirements of this section. Fees for covered services

20-00157A-13

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117 shall be set in good faith and must not be nominal.

118 (c) A health maintenance organization may not require as a
119 condition of the contract that the dentist participate in a
120 discount medical plan under part II of chapter 636.

121 Section 4. This act shall take effect July 1, 2013, and
122 applies to contracts entered into or renewed on or after that
123 date.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/22/2013

Meeting Date

Topic _____

Bill Number 924
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

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.

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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)

4/22/13

Meeting Date

Topic Dentists

Bill Number SB 924
(if applicable)

Name Greg Pound

Amendment Barcode _____
(if applicable)

Job Title _____

Address 9166 Sunrise

Phone _____

Street

Largo Fla 33773

City

State

Zip

E-mail _____

Speaking: For Against Information

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.

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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)

4/22/13

Meeting Date

Topic Dentistry

Bill Number SB 924

(if applicable)

Name Ron Watson

Amendment Barcode _____

(if applicable)

Job Title Lobbyist

Address 118 E Jefferson St

Phone 850-224-1089

Street

Tallahassee FL 32301

E-mail rwatson@floridadental.org

City

State

Zip

Speaking: For Against Information

Representing Florida Dental Association FDA

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)

4/22/13

Meeting Date

Topic Dental "Non Contact"

Bill Number 924
(if applicable)

Name Chris Hansen

Amendment Barcode _____
(if applicable)

Job Title Gray Robinson

Address _____

Phone 850/577-9090

Street _____

Tallahassee FL 32301
City State Zip

E-mail Chansen@gray-robinson.com

Speaking: For Against Information

Representing FL Society of Oral and Maxillofacial Surgeons

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
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 984

INTRODUCER: Governmental Oversight and Accountability Committee, Environmental Preservation and Conservation Committee and Senator Richter

SUBJECT: Public Records/Natural Gas Storage Facility Permit

DATE: April 19, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gudeman	Uchino	EP	Fav/CS
2.	Naf	McVaney	GO	Fav/CS
3.	Gudeman	Phelps	RC	Favorable
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/CS/SB 984 is a public records exemption bill linked to CS/SB 958. In pertinent part, CS/SB 958 establishes permitting requirements to store gas in a natural gas storage reservoir and authorizes the Department of Environmental Protection (DEP) to regulate the storage of natural gas by reviewing and processing permit applications to operate such storage facilities.

This bill creates a public records exemption for “proprietary business information” held by the DEP in accordance with its duties relating to an application for a natural gas storage facility permit. It authorizes the release of the confidential and exempt proprietary business information in certain circumstances.

The bill provides that the exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2018, unless reviewed and reenacted by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

Because this bill creates a public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

This bill creates section 377.24075 of the Florida Statutes.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

⁴ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁵ Section 119.07(1)(a), F.S.

⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

The Open Government Sunset Review Act¹⁰ requires a newly created or expanded public records exemption to be repealed on October 2 of the fifth year after enactment, unless reviewed and reenacted by the Legislature.¹¹ It further provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet the public purpose it serves.¹²

CS/SB 958: Underground Natural Gas Storage

Currently, Florida has no regulatory provisions for underground natural gas storage facilities. The Oil and Gas Program is the permitting authority within the Department of Environmental Protection's (DEP's) Mining and Minerals Regulation Program in the Division of Water Resource Management (Division). Companies interested in the exploration or production of hydrocarbons in Florida are regulated by the Oil and Gas Program. Primary responsibilities of the Program include conservation of oil and gas resources, correlative rights protection, maintenance of health and human safety, and environmental protection. These concerns are addressed through a system of permits and field inspections to insure compliance. Primary duties include permitting geophysical operations (usually seismic prospecting), permitting drilling or operating wells (all separate permits), and tracking activities through use of a computer database. All permitted activities are inspected by staff of the Oil and Gas Program.

CS/SB 958, the companion to this bill, establishes permitting requirements to store gas in a natural gas storage reservoir. CS/SB 958 provides that before drilling a well to inject gas into and recover gas from a natural gas storage reservoir, a person who desires to conduct such operation must apply to the DEP and pay a reasonable fee for processing to obtain a natural gas storage facility permit.

Under CS/SB 958, each permit application must contain:

- A detailed, three-dimensional description of the natural gas storage reservoir, including geologic-based descriptions of the reservoir boundaries, and the horizontal and vertical dimensions.
- A geographic description of the lateral reservoir boundary.
- A description and location of all injection, recovery, and observation wells, including casing and cementing plans for each well.
- A description of the reservoir protective area.
- Information demonstrating that the proposed natural gas storage reservoir is suitable for the storage and recovery of gas.
- Information identifying all known abandoned or active wells within the natural gas storage facility.
- A field-monitoring plan that requires, at a minimum, monthly field inspections of all wells that are part of the natural gas storage facility.
- A monitoring and testing plan for the well integrity.

¹⁰ Section 119.15, F.S.

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(5)(b), F.S.

- A well inspection plan that requires, at a minimum, the inspection of all wells that are part of the natural gas storage facility and plugged wells within the natural gas storage facility boundary.
- A spill prevention and response plan.
- A well spacing plan.
- An operating plan for the natural gas storage reservoir, which must include gas capacities, anticipated operating conditions, and maximum storage pressure.
- A gas migration response plan.
- A location plat and general facility map surveyed and prepared by a registered land surveyor.

The DEP may also require additional information that is deemed necessary to permit the development of the natural gas storage facility.

III. Effect of Proposed Changes:

The bill provides that proprietary business information held by DEP in accordance with its statutory duties with respect to an application for a natural gas storage facility permit is confidential and exempt¹³ from s. 119.07(1), F.S., and Article I, section 24(a) of the Florida Constitution.

The bill defines “proprietary business information” as information that:

- Is owned or controlled by the applicant or a person affiliated with the applicant.
- Is intended to be private and is treated by the applicant as private because disclosure would harm the applicant or the applicant's business operations.
- Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public.
- Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as requested by the department.
- Includes, but is not limited to:
 - Trade secrets as defined in the Uniform Trade Secrets Act.¹⁴
 - Leasing plans, real property acquisition plans, exploration budgets, or marketing studies, the disclosure of which would impair the efforts of the applicant or its affiliates to contract for goods or services or to acquire real property interests on favorable terms.
 - Competitive interests, which may include well design or completion plans, geological or engineering studies related to storage reservoir performance characteristics, or field

¹³ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. See Attorney General Opinion 85-62 (August 1, 1985).

¹⁴ Section 688.002(4), F.S., defines “trade secret” to mean information, including a formula, pattern, compilation, program, device, method, technique, or process that:

- Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure and use; and
- Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

utilization strategies or operating plans, the disclosure of which would impair the competitive business of the applicant providing the information.

- May be found in a document:
 - Filed with the department by the applicant or affiliated person seeking a natural gas storage facility permit pursuant to s. 377.2407, F.S.; or
 - Sent to the department from another governmental entity for use by the department in the performance of its duties. This subparagraph applies only if the information is otherwise confidential or exempt as held by the governmental entity.

The bill authorizes the DEP to disclose the confidential and exempt proprietary business information:

- Pursuant to a court order;
- If the applicant to which it pertains gives prior written consent; or
- To another governmental entity if the receiving entity agrees in writing to maintain the confidential and exempt status of the information and has verified in writing its legal authority to maintain such confidentiality.

The bill provides that the public records exemption is subject to the Open Sunset Review Act and stands repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

The bill provides an effective date contingent upon the passage of CS/SB 958 or similar legislation.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not appear to affect county or municipal governments.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it includes a public necessity statement.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill could create a minimal fiscal impact on the DEP because staff responsible for complying with public records requests could require training related to the creation of the public records exemption. In addition, the DEP could incur costs associated with redaction of the confidential and exempt information prior to releasing a record. The costs would be absorbed, however, as they are part of the day-to-day responsibilities of the DEP.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill's public necessity statement provides that it is a public necessity to protect, in part, commercial studies. However, the exemption as currently drafted does not specifically protect commercial studies.

The bill does not define "department," but it appears to use "department" and "Department of Environmental Protection" interchangeably to refer to the DEP.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Governmental Oversight and Accountability on April 16, 2013:

The CS/CS:

- Provides that trade secrets are defined as in s. 688.002, F.S.
- Revises the entities with whom the confidential and exempt information may be shared to provide that such information may be shared with another "governmental entity" instead of with "another state agency in this or another state or to a federal agency."

CS by Environmental Preservation and Conservation on April 9, 2013:

The CS:

- Provides that “proprietary business information” is exempt from s. 119.07(1), F.S., and provides a definition of “proprietary business information.”
- Removes the ten year time limitation on the exemption.
- Specifies circumstances under which the DEP may disclose proprietary business information.

B. Amendments:

None.

By the Committees on Governmental Oversight and Accountability;
and Environmental Preservation and Conservation; and Senators
Richter and Smith

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1 A bill to be entitled
2 An act relating to public records; creating s.
3 377.24075, F.S.; creating an exemption from public
4 records requirements for certain information provided
5 in an application for a natural gas storage facility
6 permit to inject and recover gas into and from a
7 natural gas storage reservoir; defining the term
8 "proprietary business information"; providing
9 exceptions to the exemption; providing for future
10 review and repeal of the public records exemption
11 under the Open Government Sunset Review Act; providing
12 a statement of public necessity; providing a
13 contingent effective date.

14
15 Be It Enacted by the Legislature of the State of Florida:

16 Section 1. Section 377.24075, Florida Statutes, is created
17 to read:

18 377.24075 Exemption from public records requirements.—
19 Proprietary business information held by the Department of
20 Environmental Protection in accordance with its statutory duties
21 with respect to an application for a natural gas storage
22 facility permit is confidential and exempt from s. 119.07(1) and
23 s. 24(a), Art. I of the State Constitution.

24 (1) As used in this section, the term "proprietary business
25 information" means information that:

26 (a) Is owned or controlled by the applicant or a person
27 affiliated with the applicant.

28 (b) Is intended to be private and is treated by the
29

Page 1 of 5

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30 applicant as private because disclosure would harm the applicant
31 or the applicant's business operations.

32 (c) Has not been disclosed except as required by law or a
33 private agreement that provides that the information will not be
34 released to the public.

35 (d) Is not publicly available or otherwise readily
36 ascertainable through proper means from another source in the
37 same configuration as requested by the department.

38 (e) Includes, but is not limited to:

39 1. Trade secrets as defined in s. 688.002;

40 2. Leasing plans, real property acquisition plans,
41 exploration budgets, or marketing studies, the disclosure of
42 which would impair the efforts of the applicant or its
43 affiliates to contract for goods or services or to acquire real
44 property interests on favorable terms; or

45 3. Competitive interests, which may include well design or
46 completion plans, geological or engineering studies related to
47 storage reservoir performance characteristics, or field
48 utilization strategies or operating plans, the disclosure of
49 which would impair the competitive business of the applicant
50 providing the information.

51 (f) May be found in a document:

52 1. Filed with the Department of Environmental Protection by
53 the applicant or affiliated person seeking a natural gas storage
54 facility permit pursuant to s. 377.2407; or

55 2. Sent to the Department of Environmental Protection from
56 another governmental entity for use by the department in the
57 performance of its duties. This subparagraph applies only if the
58 information is otherwise confidential or exempt as held by the

Page 2 of 5

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59 governmental entity.

60 (2) The Department of Environmental Protection may disclose
61 confidential and exempt proprietary business information:

62 (a) Pursuant to a court order;

63 (b) If the applicant to which it pertains gives prior
64 written consent; or

65 (c) To another governmental entity if the receiving entity
66 agrees in writing to maintain the confidential and exempt status
67 of the information and has verified in writing its legal
68 authority to maintain such confidentiality.

69 (3) This section is subject to the Open Government Sunset
70 Review Act in accordance with s. 119.15 and shall stand repealed
71 on October 2, 2018, unless reviewed and saved from repeal
72 through reenactment by the Legislature.

73 Section 2. (1) The Legislature finds that it is a public
74 necessity that proprietary business information provided to the
75 Department of Environmental Protection which relates to trade
76 secrets, leasing plans, real property acquisition plans,
77 exploration budgets, proprietary well design or completion
78 plans, geological or engineering studies related to storage
79 reservoir performance characteristics, field utilization
80 strategies or operating plans, commercial or marketing studies,
81 or other proprietary business information provided by a person
82 in conjunction with an application to establish an underground
83 natural gas storage facility as defined in s. 377.19, Florida
84 Statutes, be made confidential and exempt from s. 119.07(1),
85 Florida Statutes, and s. 24(a), Article I of the State
86 Constitution. The disclosure of such proprietary business
87 information could injure an applicant in the marketplace by

585-04492-13 2013984c2

88 giving competitors detailed insight into technical assessments,
89 design, and experience, thereby putting the applicant at a
90 competitive disadvantage. Without this exemption, applicants
91 might be less willing to expend or commit to expend the
92 substantial resources necessary to determine the feasibility of
93 establishing, permitting, and operating an underground natural
94 gas storage facility, resulting in limited opportunities for
95 developing the additional natural gas storage capacity that this
96 state critically needs to meet current and future residential,
97 commercial, and industrial energy needs. The resulting lack of
98 resources could hinder the ability of electric utility services
99 to optimize services to their customers and could adversely
100 affect those customers by depriving them of the opportunities
101 and energy security that comes with domestic reserves of natural
102 gas stored underground.

103 (2) Proprietary business information derives actual or
104 potential independent economic value from not being generally
105 known to and not being readily ascertainable by other persons
106 who can derive economic value from its disclosure or use. The
107 Department of Environmental Protection, in the course of
108 reviewing and issuing permitting decisions relating to
109 underground natural gas storage facility permits, may need to
110 obtain proprietary business information. Disclosure of such
111 information could destroy the value of that property and could
112 cause economic harm to the applicant providing the information.
113 Additionally, the reduced competition for the provision of
114 domestic underground storage of natural gas could adversely
115 affect energy utility customers. The exemption created by this
116 act will enhance the ability to increase domestic storage of

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117 natural gas, thereby creating a significant benefit to energy
118 utility customers. In finding that the public records exemption
119 created by this act is a public necessity, the Legislature also
120 finds that any public benefit derived from disclosure of the
121 information is significantly outweighed by the public and
122 private harm that could result from disclosure after submittal
123 of such proprietary business information.

124 Section 3. This act shall take effect October 1, 2013, if
125 SB 958 or similar legislation is adopted in the same legislative
126 session or an extension thereof and becomes a law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Gaming, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health
and Human Services
Banking and Insurance
Commerce and Tourism
Judiciary
Rules
Transportation

JOINT COMMITTEE:

Joint Legislative Budget Commission

SENATOR GARRETT RICHTER

President Pro Tempore
23rd District

April 17, 2013

The Honorable John Thrasher, Chair
Senate Committee on Rules
402 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Chairman Thrasher:

CS/CS/Senate Bill 984, the Public Records Companion to the Florida Underground Natural Gas Storage Act, has been referred to the Committee on Rules. I would appreciate the placing of this bill on the committee's next agenda if received.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Garrett Richter".

Garrett Richter

cc: John Phelps, Staff Director

RECEIVED

APR 17 2013

SENATE
RULES COMMITTEE

REPLY TO:

- 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
- 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
- 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/22/2013

Meeting Date

Topic _____

Bill Number 984
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

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
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 1412

INTRODUCER: Rules Committee and Senator Richter

SUBJECT: Expert Testimony

DATE: April 24, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	Favorable
2.	Munroe	Phelps	RC	Fav/CS
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 1412 amends the standards for the admission of expert testimony in Florida courts to create a new hybrid standard sharing elements of both the *Frye*¹ and *Daubert*² standard.

The bill provides legislative findings stating that the:

“admissibility of expert testimony should be subject to a standard that generally applies the requirement of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and Federal Rule of Evidence 702, while recognizing that once knowledge is based upon principles and methods that are generally accepted within an expert community, a court need not continually reexamine the basis for such knowledge, but must ensure that the generally accepted principles and methods are relevant to the facts of the case before the court, . . .

WHEREAS, the Legislature finds that all proposed expert testimony should be subject to the new standards of s. 90.702, [F.S.], as revised in this act,

¹ *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923).

² *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

and as such, *Marsh v. Valyou*, 977 So. 2d 543 (Fla. 2007) and its holding as to pure opinion testimony, is overruled . . .”

The bill amends s. 90.702, F.S., to prohibit an expert witness from testifying in the form of an opinion or otherwise, including pure opinion testimony, unless the testimony satisfies the following additional criteria:

- The testimony is based on sufficient facts or data;
- The testimony is the product of reliable principles and methods; and
- The witness has applied the principles and methods reliably to the facts of the case.

A witness may testify as an expert witness if the principles and methods on which such testimony is based are sufficiently established as generally accepted by the relevant expert community and are relevant to the facts of the particular case.

The requirements apply in any case in which the expert opinion testimony is based on scientific, technical, or other specialized knowledge. All proposed expert testimony, including pure opinion, is subject to the limitations of ss. 90.702 and 90.704, F.S.

The bill amends s. 90.704, F.S., to prohibit the disclosure of inadmissible facts or data to a jury by the proponent of an expert opinion or by inference unless the court determines that their probative value in assisting the jury’s evaluation of the expert’s opinion is substantially outweighed by their prejudicial effect. As a result of the amendments, the effect of s. 90.704, F.S., is conformed to the effect of Federal Rule of Evidence 703.

Currently, Florida courts employ the standard articulated in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923), which requires the party who wants to introduce the expert opinion testimony into evidence to show that the methodology or principle has sufficient reliability.

This bill amends sections 90.702 and 90.704, Florida Statutes.

II. Present Situation:

Admission of Expert Testimony (*Daubert* or *Frye* Standard)

Expert testimony has been used to assist the trier of fact in both civil and criminal trials for a wide range of subjects, including polygraph examination, battered woman syndrome, child abuse cases, and serum blood alcohol. The Florida Rules of Civil Procedure define an “expert witness” as a person duly and regularly engaged in the practice of a profession who holds a professional degree from a university or college and has had special professional training and experience, or one possessed of special knowledge or skill about the subject upon which called to testify.³ Courts use expert witness testimony when scientific, technical, or other specialized knowledge may assist the trier of fact in understanding evidence or determining facts in issue during litigation. The Florida Evidence Code provides that the facts or data upon which an expert bases an opinion or inference may be those perceived by, or made known to, the expert at or before

³ Fla. R. Civ. P. 1.390(a).

trial. If the facts or data are of a type reasonably relied upon by experts in the subject to support the opinion expressed, the facts or data need not be admissible in evidence.⁴ The Florida Supreme Court has considered the issue of whether experts can testify on direct examination that they relied on the hearsay opinions of other experts in forming their opinions.⁵ The Court held that an expert is not permitted to testify on direct examination that the expert relied on consultations with colleagues or other experts in reaching his or her opinion because it impermissibly permits the testifying experts to bolster their opinions and creates the danger that the testifying experts will serve as conduits for the opinions of others who are not subject to cross-examination.⁶ The Court emphasized that its holding did not preclude experts from relying on facts or data that are not independently admissible if the facts or data are a type reasonably relied upon by experts in the subject.⁷

***Frye* Standard**

To admit scientific testimony into evidence, Florida courts currently use the standard governing the admissibility of scientific expert testimony imposed in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923).⁸ If the subject matter involves new or novel scientific evidence, the *Frye* standard requires the party who wants to introduce the expert opinion into evidence to show that the methodology or principle has sufficient reliability. In *Frye*, the court held that the “principle or discovery” must be sufficiently established to “have gained general acceptance in the particular field in which it belongs.”⁹

The Florida Supreme Court imposes four steps in its articulation of the *Frye* test:

1. The trial judge must determine whether such expert testimony will assist the jury in understanding the evidence or in determining a fact in issue.
2. The trial judge must decide whether the expert’s testimony is based on a scientific principle or discovery that is “sufficiently established to have gained general acceptance in the particular field in which it belongs.”
3. The trial judge must determine whether a particular witness is qualified as an expert to present opinion testimony on the subject in issue.
4. The judge may then allow the expert to render an opinion on the subject of his or her expertise, and it is then up to the jury to determine the credibility of the expert’s opinion, which it may either accept or reject.¹⁰

The Florida Supreme Court noted that, under *Frye*, the court’s inquiry focuses only on the general acceptance of the scientific principles and methodologies upon which an expert relies to give his or her opinion.¹¹ The *Frye* test is satisfied through the court’s finding of proof of general

⁴ Section 90.704, F.S.

⁵ *Linn v. Fossum*, 946 So. 2d 1032 (Fla. 2006).

⁶ *Id.* at 1033.

⁷ *Id.*

⁸ *Stokes v. State*, 548 So. 2d 188 (Fla. 1989).

⁹ *Frye v. United States*, 293 F. 1013, 1014 (D.C. Cir. 1923).

¹⁰ *Ramirez v. State*, 651 So. 2d 1164, 1166-67 (Fla. 1995).

¹¹ *Marsh v. Valyou*, 977 So. 2d 543, 549 (Fla. 2007).

acceptance of the basis of an expert's opinion.¹² Once the basis or foundation is established for an expert's opinion, the finder of fact may then assess and weigh the opinion for its value.¹³

The *Frye* test is not applicable to all expert opinion proffered for admissibility into evidence. If the expert opinion is based solely on the expert's experience and training, and the opinion does not rely on something that constitutes new or novel scientific tests or procedures, then it may be admissible without meeting the *Frye* standard.¹⁴ By example, Florida courts admit medical expert testimony concerning medical causation when based solely on the expert's training and experience.¹⁵ One court in determining the admissibility of medical expert testimony noted that *Frye* was not applicable to medical testimony (pure opinion) because the expert relied on his analysis of medical records and differential diagnosis rather than a study, test, procedure, or methodology that constituted new or novel scientific evidence.¹⁶

Florida Rules of Evidence

The Florida Evidence Code is codified in ch. 90, F.S. Section 90.102, specifies that the chapter replaces and supersedes existing statutory or common law in conflict with its provisions. As previously noted, the Florida Supreme Court regularly adopts amendments to the Evidence Code as rules of court when it is determined that the matter is procedural rather than substantive. The Florida Evidence Code requires an expert to demonstrate knowledge, skill, experience, training, or education in the subject matter to qualify as an expert.¹⁷ In a concurring opinion, one justice has argued that the Florida Supreme Court has "never explained how *Frye* has survived the adoption of the rules of evidence."¹⁸ Justice Anstead also noted that the Florida Supreme Court has continued to apply *Frye* in determining the admissibility of scientific expert opinion testimony after the adoption of the Florida Rules of Evidence, but has done so without any mention that the rules do not mention *Frye* or the test set out in *Frye*.¹⁹

Daubert Standard

The *Frye* standard was used in federal courts until 1993 when the U.S. Supreme Court issued its opinion in the case of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*²⁰ The U.S. Supreme Court held that Federal Rule of Evidence 702 had superseded the *Frye* test, and it announced a new standard for determining the admissibility of novel scientific evidence.²¹ Under the *Daubert* test, when there is a proffer of expert testimony, the judge as a gatekeeper must make "a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and of whether that reasoning or methodology properly can be applied to the facts in

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 548. See also Charles W. Ehrhardt, *Florida Evidence*, s. 702.3 (2012 ed.).

¹⁵ See, e.g., *Cordoba v. Rodriguez*, 939 So. 2d 319, 322 (Fla. 4th DCA 2006); *Fla. Power & Light Co. v. Tursi*, 729 So. 2d 995, 996 (Fla. 4th DCA 1999).

¹⁶ *Gelsthorpe v. Weinstein*, 897 So. 2d 504, 510-11 (Fla. 2d DCA 2005); See also, *Marsh*, 977 So. 2d at 548-49.

¹⁷ Section 90.702, F.S.

¹⁸ *Marsh*, 977 So. 2d at 551 (Anstead, J., concurring).

¹⁹ *Id.*

²⁰ *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

²¹ *Id.*

issue.”²² The Court announced other factors that a court may consider as part of its assessment under the *Daubert* test for the admissibility of expert scientific testimony:

- Whether the scientific methodology is susceptible to testing or has been tested;
- Whether the theory or technique has been subjected to peer review and publication;
- Whether in the case of a particular scientific technique, the court ordinarily should consider the known or potential rate of error; and
- The existence and maintenance of standards controlling the technique’s operation.²³

Federal Rule of Evidence 702 was amended in 2000 to reflect *Daubert* and other decisions applying *Daubert*.²⁴ In *General Electric Co. v. Joiner*, the U.S. Supreme Court held that abuse of discretion is the appropriate standard of review for an appellate court to apply when reviewing a trial court’s decision to admit or exclude evidence under *Daubert*.²⁵ In *Kumho Tire Co. v. Carmichael*, the Court held that a trial judge is not bound by the specific factors outlined in *Daubert*, but depending on the circumstances of the particular case at issue, the judge may consider other factors in his or her assessment under *Daubert*.²⁶ Additionally, the Court in *Kumho Tire Co.* held that the trial judge’s obligation to be a gatekeeper is not limited to scientific testimony but extends to all expert testimony.²⁷

The *Weisgram v. Marley Co.* case, a part of the *Daubert* progeny, was a wrongful death action against a manufacturer of heaters in which the plaintiff introduced expert testimony that the alleged heater defect caused a house fire.²⁸ The Court held that a federal appellate court may direct the entry of judgment as a matter of law when the court determines that evidence was erroneously admitted at trial and the remaining evidence that was properly admitted is insufficient to support the jury verdict.²⁹ The plaintiffs obtained a jury verdict based on the expert testimony that the heater was defective and that the heater’s defect caused the fire.³⁰ The U.S. Supreme Court affirmed the Court of Appeals’ reversal of the jury verdict, finding that the expert testimony offered by the plaintiff was speculation under Federal Rule of Evidence 702 as explicated in *Daubert* regarding the defectiveness of the heater.³¹ The Court found the plaintiff’s fears unconvincing that “allowing [federal] courts of appeals to direct the entry of judgment for defendants will punish plaintiffs who could have shored up their cases by other means had they known their expert testimony would be found inadmissible.”³² The Court stated that *Daubert* put parties on notice regarding the exacting standards of reliability demanded of expert testimony.³³

²² *Id.* at 592-93.

²³ *Id.* at 592-94.

²⁴ Fed. R. Evid. 702, Advisory Committee Notes for 2000 Amendments.

²⁵ *General Electric Co. v. Joiner*, 522 U.S. 136, 139 (1997).

²⁶ *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 147-52 (1999).

²⁷ *Id.*

²⁸ *Weisgram v. Marley Co.*, 528 U.S. 440 (2000).

²⁹ *Id.* at 445-46.

³⁰ *Id.*

³¹ *Id.* at 445-47.

³² *Id.* at 455-56.

³³ *Id.*

III. Effect of Proposed Changes:

The bill amends the standards for the admission of expert testimony in Florida courts to create a new hybrid standard sharing elements of both the *Frye* and *Daubert* standard.

The bill provides legislative findings stating that the

“admissibility of expert testimony should be subject to a standard that generally applies the requirement of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and Federal Rule of Evidence 702, while recognizing that once knowledge is based upon principles and methods that are generally accepted within an expert community, a court need not continually reexamine the basis for such knowledge, but must ensure that the generally accepted principles and methods are relevant to the facts of the case before the court, . . .

WHEREAS, the Legislature finds that all proposed expert testimony should be subject to the new standards of s. 90.702, [F.S.], as revised in this act, and as such, *Marsh v. Valyou*, 977 So. 2d 543 (Fla. 2007) and its holding as to pure opinion testimony, is overruled . . .”

The bill amends s. 90.702, F.S., to prohibit an expert witness from testifying in the form of an opinion or otherwise, including pure opinion testimony, unless the testimony satisfies the following additional criteria:

- The testimony is based on sufficient facts or data;
- The testimony is the product of reliable principles and methods; and
- The witness has applied the principles and methods reliably to the facts of the case.

A witness may testify as an expert witness if the principles and methods on which such testimony is based are sufficiently established as generally accepted by the relevant expert community and are relevant to the facts of the particular case.

The requirements apply in any case in which the expert opinion testimony is based on scientific, technical, or other specialized knowledge. All proposed expert testimony, including pure opinion, is subject to the limitations of ss. 90.702 and 90.704, F.S.

The bill amends s. 90.704, F.S., to prohibit the disclosure of inadmissible facts or data to a jury by the proponent of an expert opinion or by inference unless the court determines that their probative value in assisting the jury’s evaluation of the expert’s opinion is substantially outweighed by their prejudicial effect. As a result of the amendments, the effect of s. 90.704, F.S., is conformed to the effect of Federal Rule of Evidence 703.

Currently, Florida courts employ the standard articulated in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923), which requires the party who wants to introduce the expert opinion testimony into evidence to show that the methodology or principle has sufficient reliability.

The bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

There is a balance between enactments of the Legislature and the Florida Supreme Court on matters relating to evidence. The Legislature has enacted and continues to revise ch. 90, F.S., and the Florida Supreme Court tends to adopt these changes as rules. The Florida Supreme Court regularly adopts amendments to the Evidence Code as rules of court when it is determined that the matter is procedural rather than substantive. If the Florida Supreme Court views the changes in this bill as an infringement upon the Court's authority over practice and procedure, it may refuse to adopt the changes in the bill as a rule.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Generally, in civil litigation such as negligence actions, the plaintiff has the burden of proof on issues essential to his or her cause of action.³⁴ The change in the new evidentiary standard may have a fiscal impact on the outcome of lawsuits or the number of such lawsuits.

It is difficult to quantify the fiscal impact of the bill's change in evidentiary standards for the admission of expert opinions. It may or may not result in a need for additional pre-trial hearings depending on the manner in which it is actually implemented by the courts.

³⁴ *Gooding v. Univ. Hosp. Bldg., Inc.*, 445 So. 2d 1015, 1018 (Fla. 1984). "On the issue of the fact of causation, as on other issues essential to his cause of action for negligence, the plaintiff, in general, has the burden of proof." (quoting *Prosser, Law of Torts* § 41 (4th ed. 1971)). *Id.*

C. Government Sector Impact:

Last year, under similar legislation, SB 378 (2012), the fiscal impact of the bill was estimated to have a recurring fiscal impact of between \$1-\$1.25 million due to “expert expenses and the utilization of assistant state attorneys’ time in the more complicated cases.”³⁵

The committee substitute adds *Frye* criteria to the proposed *Daubert* criteria language. As with the original bill’s language, the change in the standard to admit expert opinions in Florida courts may have an impact on the number of pre-trial hearings needed, but it is difficult to estimate due to the unavailability of data needed to quantify any increase or decrease in judicial workload.

According to the Florida Prosecuting Attorneys Association (FPAA), CS/SB 378 (2012) allows “established science” to meet a *Frye* standard, while new and emerging scientific testimony is subject to the *Daubert* standard. As a result, the FPAA estimates that the “hybrid” standard would reduce the fiscal impact in half to \$500,000-\$625,000.

In criminal proceedings, the state may incur additional costs in litigating the application and interpretation of the new standards supplied in this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

CS by Rules on April 22, 2013:

The committee substitute no longer requires courts to interpret and apply ss. 90.702 and 90.704, F.S., in accordance with *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and several related federal cases.³⁶ The committee substitute amends the standards for the admission of expert testimony in Florida courts to create a new standard. The committee substitute prohibits an expert witness from testifying in the form of an opinion or otherwise, including pure opinion testimony, unless the testimony satisfies specified additional criteria and conforms to the requirements of Federal Rule of Evidence 703.

³⁵ Information contained in this portion of this bill analysis is from the analysis for CS/SB 378 (2012) by the Senate Committee on Budget (March 1, 2012), available at <http://www.flsenate.gov/Session/Bill/2012/0378/Analyses/o0blQ/WuDGjf/oeyD6gNks=PL=0ZTQ=%7C11/Public/Bills/0300-0399/0378/Analysis/2012s0378.bc.PDF> (last visited Apr. 23, 2013).

³⁶ *General Electric Co. v. Joiner*, 522 U.S. 136 (1997), and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999).

B. Amendments:

None.

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



452792

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/22/2013	.	
	.	
	.	
	.	

The Committee on Rules (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 90.702, Florida Statutes, is amended to
read:

90.702 Testimony by experts.-

(1) If scientific, technical, or other specialized
knowledge will assist the trier of fact in understanding the
evidence or in determining a fact in issue, a witness qualified
as an expert by knowledge, skill, experience, training, or
education may testify about it in the form of an opinion or
otherwise if:



452792

14 (a) The testimony is based upon sufficient facts or data;

15 (b) The testimony is the product of reliable principles and
16 methods; and

17 (c) The witness has applied the principles and methods
18 reliably to the facts of the case; however, the opinion is
19 admissible only if it can be applied to evidence at trial.

20 (2) The threshold required under subsection (1) to allow a
21 witness to testify as an expert witness is satisfied if the
22 principles and methods on which such knowledge is based are
23 sufficiently established as generally accepted by the relevant
24 expert community and are relevant to the facts of the particular
25 case.

26 (3) The stated testimonial requirements apply in any case
27 in which the expert opinion testimony is based on scientific,
28 technical, or other specialized knowledge. All proposed expert
29 testimony, including pure opinion testimony, is subject to ss.
30 90.702 and 90.704.

31 Section 2. Section 90.704, Florida Statutes, is amended to
32 read:

33 90.704 Basis of opinion testimony by experts.—The facts or
34 data upon which an expert bases an opinion or inference may be
35 those perceived by, or made known to, the expert at or before
36 the trial. If the facts or data are of a type reasonably relied
37 upon by experts in the subject to support the opinion expressed,
38 the facts or data need not be admissible in evidence. Facts or
39 data that are otherwise inadmissible may not be disclosed to the
40 jury by the proponent of the opinion or inference unless the
41 court determines that their probative value in assisting the
42 jury to evaluate the expert's opinion substantially outweighs



452792

43 their prejudicial effect.

44 Section 3. This act shall take effect July 1, 2013.

45

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

47 And the title is amended as follows:

48 Delete everything before the enacting clause
49 and insert:

50 A bill to be entitled

51 An act relating to expert testimony; amending s.

52 90.702, F.S.; providing that a witness qualified as an
53 expert by knowledge, skill, experience, training, or
54 education may testify in the form of an opinion or
55 otherwise as to the facts at issue in a case under
56 certain circumstances; providing that the elements
57 necessary to allow a witness to testify as an expert
58 witness are satisfied if the principles and methods on
59 which such knowledge is based are generally accepted
60 by the relevant expert community; providing for
61 applicability; amending s. 90.704, F.S.; providing
62 that facts or data that are otherwise inadmissible in
63 evidence may not be disclosed to the jury by the
64 proponent of the opinion or inference unless the court
65 determines that the probative value of the facts or
66 data in assisting the jury to evaluate the expert's
67 opinion substantially outweighs the prejudicial effect
68 of the facts or data; providing an effective date.

69

70 WHEREAS, the Legislature finds that the admissibility of
71 expert testimony in the State of Florida is in need of revision



452792

72 and clarification, and

73 WHEREAS, the Legislature finds that the admissibility of
74 expert testimony should be subject to a standard that generally
75 applies the requirement of *Daubert v. Merrell Dow*
76 *Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and federal rule of
77 evidence 702, while recognizing that once knowledge is based
78 upon principles and methods that are generally accepted within
79 an expert community, a court need not continually reexamine the
80 basis for such knowledge, but must ensure that the generally
81 accepted principles and methods are relevant to the facts of the
82 case before the court, and

83 WHEREAS, this act does not alter the authority of the
84 courts in this state to manage their dockets as they deem
85 appropriate, including, but not limited to, deciding whether a
86 hearing or presentation of live testimony is required to resolve
87 a pending motion, and

88 WHEREAS, the Legislature finds that all proposed expert
89 testimony should be subject to the new standards of s. 90.702,
90 Florida Statutes, as revised in this act, and as such, *Marsh v.*
91 *Valyou*, 977 So. 2d 543 (Fla. 2007) and its holding as to pure
92 opinion testimony, is overruled, NOW, THEREFORE,

By Senator Richter

23-00955A-13

20131412__

A bill to be entitled

An act relating to expert testimony; amending s. 90.702, F.S.; providing that a witness qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion as to the facts at issue in a case under certain circumstances; requiring the courts of this state to interpret and apply the principles of expert testimony in conformity with specified United States Supreme Court decisions; subjecting pure opinion testimony to such requirements; amending s. 90.704, F.S.; providing that facts or data that are otherwise inadmissible in evidence may not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that the probative value of the facts or data in assisting the jury to evaluate the expert's opinion substantially outweighs the prejudicial effect of the facts or data; providing an effective date.

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

Section 1. Section 90.702, Florida Statutes, is amended to read:

90.702 Testimony by experts.—

(1) If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion or

Page 1 of 3

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

23-00955A-13

20131412__

otherwise, if:

(a) The testimony is based upon sufficient facts or data;

(b) The testimony is the product of reliable principles and methods; and

(c) The witness has applied the principles and methods reliably to the facts of the case, ~~however, the opinion is admissible only if it can be applied to evidence at trial.~~

(2) The courts of this state shall interpret and apply the requirements of subsection (1) and s. 90.704 in accordance with *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993); *General Electric Co. v. Joiner*, 522 U.S. 136 (1997); and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999). *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923) and subsequent Florida decisions applying or implementing *Frye* no longer apply to subsection (1) or s. 90.704. All proposed expert testimony, including pure opinion testimony as discussed in *Marsh v. Valyou*, 977 So. 2d 543 (Fla. 2007), is subject to subsection (1) and s. 90.704.

Section 2. Section 90.704, Florida Statutes, is amended to read:

90.704 Basis of opinion testimony by experts.—The facts or data upon which an expert bases an opinion or inference may be those perceived by, or made known to, the expert at or before the trial. If the facts or data are of a type reasonably relied upon by experts in the subject to support the opinion expressed, the facts or data need not be admissible in evidence. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the

Page 2 of 3

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

23-00955A-13

20131412__

59 jury to evaluate the expert's opinion substantially outweighs
60 their prejudicial effect.

61 Section 3. This act shall take effect July 1, 2013.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Gaming, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health
and Human Services
Banking and Insurance
Commerce and Tourism
Judiciary
Rules
Transportation

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR GARRETT RICHTER

President Pro Tempore
23rd District

April 12th, 2013

The Honorable John Thrasher, Chair
Committee on Rules
402 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

RECEIVED

APR 15 2013

**SENATE
RULES COMMITTEE**

Dear Chair Thrasher:

Senate Bill 1412 relating to Expert Testimony is scheduled to be heard in the committee on Judiciary this upcoming Monday, April 15th. The next committee of reference is Rules. I expect the bill will be reported favorably out of the Judiciary committee with no amendments. I would appreciate the placing of this bill on the Monday, April 22nd agenda of the Rules committee.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Garrett Richter".

Garrett Richter

cc: John Phelps, Staff Director

REPLY TO:

- 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
- 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
- 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-22-13

Meeting Date

Topic EXPERT WITNESS

Bill Number 1412
(if applicable)

Name TROY RAFFERTY

Amendment Barcode 452792
(if applicable)

Job Title ATTORNEY

Address 316 S. Baylen
Street

Phone _____

PENSACOLA FL 32501
City State Zip

E-mail T.RAFFERTY@LevinLaw.COM

Speaking: ^{Amendment} For Against Information

Representing FJA

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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04.22.13

Meeting Date

Topic Expert Witness

Bill Number 1412
(if applicable)

Name William Large

Amendment Barcode 452792
(if applicable)

Job Title President

Address 210 South Monroe Street

Phone 850-222-0170

Street

Tallahassee FL 32301

E-mail William@fljustice.org

City

State

Zip

Speaking: For Against Information

Representing Florida Justice Reform 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.

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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)

4/22/13
Meeting Date

Topic Expert Testimony

Bill Number SB 1412
(if applicable)

Name Bill Cervone

Amendment Barcode 452792
(if applicable)

Job Title State Attorney 8th Judicial Circuit

by Sen Simmons

Address Court house

Phone _____

Street
Gainesville, Fla.
City State Zip

E-mail _____

Speaking: For Against Information

Representing FLA. Prosecuting Attys 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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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4-22-13
Meeting Date

Topic EXPERT WITNESS Bill Number SB 141Z
Name DAVID HART *Amendment Barcode 452792 (if applicable)
Job Title EXEC V.P. (if applicable)

Address 136 S. ~~BRONOUGH~~ BRONOUGH ST. Phone 850.521-1200
Street
TALLAHASSEE, FL 32301 E-mail dhart@flchamber.com
City / State Zip

Speaking: For Against Information

Representing FL CHAMBER

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

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4/22/13
Meeting Date

Topic EXPERT EVIDENCE

Bill Number 1412 (if applicable)

Name GEORGE MERDS

Amendment Barcode 452792 (if applicable)

Job Title ATTY, GRAY ROBINSON

AGAINST AMENDMENT

Address 316 S. BROWARD
Street

Phone

TALLAH
City State Zip

E-mail

Speaking: For Against Information

Representing US CHAMBER

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

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04.22.13

Meeting Date

Topic Expert Testimony

Bill Number 1412
(if applicable)

Name Dan Gerber

Amendment Barcode 452792
(if applicable)

Job Title _____

Address P.O. Box 1873

Phone 407-872-700

Street

Orlando

FL

32802

City

State

Zip

E-mail dgerber@rumberger.com

Speaking: For Against Information

Representing Florida Justice Reform 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.

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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)

4-22-13

Meeting Date

Topic EXPERT WITNESS

Bill Number SB 1412
(if applicable)

Name DAVID HART

Amendment Barcode _____
(if applicable)

Job Title EXEC VP

Address 136 S. BAONOUGH ST
Street

Phone 885.521-1200

TALLAHASSEE FL
City State Zip

E-mail dhart@flchamber.com

Speaking: For Against Information

Representing FL CHAMBER

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

WAVE IN SUPPORT

APPEARANCE RECORD

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

4-22-2013

Meeting Date

Topic EXPERT TESTIMONY

Bill Number SB 1412 (if applicable)

Name STEPHEN R. WINN

Amendment Barcode (if applicable)

Job Title EXECUTIVE DIRECTOR

Address 2007 APALACHEE PARKWAY

Phone 878-17463

TALLAHASSEE FL 32301

E-mail

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

WAVE IN SUPPORT

Representing

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)

4/22/13
Meeting Date

Topic Expert Testimony

Bill Number SB 1412
(if applicable)

Name Bill Cervone

Amendment Barcode _____
(if applicable)

Job Title State Attorney 8th Circuit

Address Court House
Street

Phone _____

Gainesville FL ~~32601~~
City State Zip

E-mail _____

Speaking: For Against Information

Representing Florida Prosecuting Attorneys 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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

04.22.13

Meeting Date

Topic Expert Testimony

Bill Number 1412

(if applicable)

Name Greg Miller

Amendment Barcode _____

(if applicable)

Job Title _____

Address 215 South Monroe Street

Phone 850-391-0001

Street

Tallahassee FL 32301

E-mail grm@beggslane.com

City

State

Zip

Speaking: For Against Information

Representing Florida Justice Reform 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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/22/2013

Meeting Date

Topic _____

Bill Number 1912
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

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)

04.22.13

Meeting Date

Topic Expert Witness

Bill Number 1412
(if applicable)

Name Dan Gerber

Amendment Barcode _____
(if applicable)

Job Title _____

Address P.O. Box 1873

Phone 407-872-7300

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Orlando FL 32802

E-mail dgerber@rumberger.com

City

State

Zip

Speaking: For Against Information

Representing Florida Justice Reform 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.

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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)

04.22.13

Meeting Date

Topic Expert Witness

Bill Number 1412
(if applicable)

Name William Large

Amendment Barcode _____
(if applicable)

Job Title President

Address 210 South Monroe Street

Phone 850-222-0170

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FL

32301

City

State

Zip

E-mail William@fljustice.org

Speaking: For Against Information

Representing Florida Justice Reform 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.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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4-22-13

Meeting Date

Topic Expert Witness

Bill Number 1412
(if applicable)

Name TOBY RAFFERTY

Amendment Barcode _____
(if applicable)

Job Title ATTORNEY

Address 316 S. Baylen

Phone _____

Street

PENSACOLA

FL

32561

E-mail TORAFFERTY@Levi.com
com

City

State

Zip

Speaking: For ^{Bill} Against Information

Representing FJA

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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4/22/13
Meeting Date

Topic Expert testimony

Bill Number 1412
(if applicable)

Name Rebecca O'Hara

Amendment Barcode _____
(if applicable)

Job Title VP Govt Affairs

Address 113 E College Ave
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Tallahassee FL 32301
City State Zip

Phone 339 6211

E-mail rohara@flmedical.org

Speaking: For Against Information

Representing Fla Medical Assn

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/22/2013
Meeting Date

Topic Benefits of Tort Reform Bill Number SB 1412
(if applicable)

Name Mark Delegal Amendment Barcode _____
(if applicable)

Job Title Counsel

Address 215. S. Monroe Street #200 Phone 222-3533

Tallahassee FL 32301 E-mail mdelegal@penningsforlaw.com
City State Zip

Speaking: Bill For Against Information

Representing Florida Chamber

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.

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 Rules

BILL: CS/CS/SB 1384

INTRODUCER: Health Policy Committee; Judiciary Committee; and Senator Galvano

SUBJECT: Nursing Home Litigation

DATE: April 19, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	Fav/CS
2.	Looke	Stovall	HP	Fav/CS
3.	Munroe	Phelps	RC	Favorable
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/CS/SB 1384 amends statutory provisions relating to civil causes of action against nursing homes. The bill:

- Requires the court to hold an evidentiary hearing before allowing a claim for punitive damages to proceed.
- Prohibits the use of a state or federal survey report of nursing facilities to establish an entitlement to punitive damages.

This bill substantially amends section 400.0237, Florida Statutes.

II. Present Situation:

Causes of Action in Nursing Homes

Section 400.022, F.S., specifies the rights and responsibilities of nursing home residents. Section 400.023, F.S., creates a statutory cause of action against nursing homes that violate the statutory rights of residents. The action may be brought in any court to enforce the resident's rights and to recover actual and punitive damages for any violation of a resident's statutory rights

or for negligence.¹ Prevailing plaintiffs may be entitled to recover reasonable attorney fees plus costs of the action along with actual and punitive damages.²

Sections 400.023-400.0238, F.S., provide the exclusive remedy for a cause of action for recovery of damages for the personal injury or death of a nursing home resident arising out of negligence or a violation of a resident's statutory rights. A claim for punitive damages is not permitted unless there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages.³ A defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that the defendant was personally guilty of intentional misconduct or gross negligence as defined in s. 400.0237(2), F.S.⁴

In the case of an employer, principal, corporation, or other entity, punitive damages may be imposed for conduct of an employee or agent only for intentional misconduct or gross negligence which is proven by clear and convincing evidence if the employer actively and knowingly participated in the conduct, ratified or consented to the conduct, or engaged in conduct that constituted gross negligence and that contributed to the loss, damages, or injury suffered by the claimant.⁵

Elements in a Civil Action Under s. 400.023, F.S.

Section 400.023(2), F.S., provides that in any claim alleging a violation of a resident's rights or alleging that negligence caused injury to or the death of a resident, the claimant must prove, by a preponderance of the evidence:

- The defendant owed a duty to the resident;
- The defendant breached the duty to the resident;
- The breach of the duty is a legal cause of loss, injury, death, or damage to the resident; and
- The resident sustained loss, injury, death, or damage as a result of the breach.

In general, the Florida Supreme Court has set forth the elements of a negligence action:

- A duty, or obligation, recognized by the law, requiring the [defendant] to conform to a certain standard of conduct, for the protection of others against unreasonable risks;
- A failure on the [defendant's] part to conform to the standard required: a breach of the duty;
- A reasonably close causal connection between the conduct and the resulting injury;⁶ and
- Actual loss or damage.⁷

Current law provides that in any claim brought pursuant to s. 400.023, F.S., a licensee, person, or entity has the duty to exercise "reasonable care" and nurses⁸ have the duty to exercise care "consistent with the prevailing professional standard of care."⁹

¹ Sections 400.023 and 400.0237, F.S.

² *Id.*

³ Section 400.0237(1), F.S.

⁴ Section 400.0237(2), F.S.

⁵ Section 400.0237(3), F.S.

⁶ This is what is commonly known as "legal cause," or "proximate cause," and which includes the notion of cause in fact.

⁷ *United States v. Stevens*, 994 So. 2d 1062, 1065-66 (Fla. 2008).

Punitive Damages

Current law provides for recovery of punitive damages by a claimant. Punitive damages “are not compensation for injury. Instead, they are private fines levied by civil juries to punish reprehensible conduct and to deter its future occurrence.”¹⁰ For a claim for damages relating to a violation of resident rights or negligence in a nursing home, punitive damages are generally limited to three times the amount of compensatory damages or \$1 million, whichever is greater.¹¹ Damages can exceed \$1 million if the jury finds that the wrongful conduct was motivated primarily by unreasonable financial gain and determines that the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was actually known by the managing agent, director, officer, or other person responsible for making policy decisions on behalf of the defendant.¹² If the jury finds that the defendant had a specific intent to harm the claimant and determines that the defendant’s conduct did in fact harm the claimant, there is no cap on punitive damages.¹³

Evidentiary Requirements to Bring a Punitive Damages Claim

Section 400.0237(1), F.S., provides:

In any action for damages brought under this part, no claim for punitive damages shall be permitted unless there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages. The claimant may move to amend her or his complaint to assert a claim for punitive damages as allowed by the rules of civil procedure. The rules of civil procedure shall be liberally construed so as to allow the claimant discovery of evidence which appears reasonably calculated to lead to admissible evidence on the issue of punitive damages. No discovery of financial worth shall proceed until after the pleading concerning punitive damages is permitted.

A court discussed how a claimant can make a proffer to assert a punitive damages claim:

[A] ‘proffer’ according to traditional notions of the term, connotes merely an ‘offer’ of evidence and neither the term standing alone nor the statute itself calls for an adjudication of the underlying veracity of that which is submitted, much less for countervailing evidentiary submissions. Therefore, a proffer is merely a representation of what evidence the defendant proposes to present and is not actual evidence. A reasonable showing by evidence in the record would typically include depositions, interrogatories, and requests for admissions that have been filed with the court. Hence, an evidentiary hearing where

⁸ “The prevailing professional standard of care for a nurse shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar nurses.” s. 400.023(4), F.S.

⁹ See s. 400.023(3) and (4), F.S.

¹⁰ *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350 (1974).

¹¹ See s. 400.0238(1)(a), F.S.

¹² See s. 400.0238(1)(b), F.S.

¹³ See s. 400.0238(1)(c), F.S.

witnesses testify and evidence is offered and scrutinized under the pertinent evidentiary rules, as in a trial, is neither contemplated nor mandated by the statute in order to determine whether a reasonable basis has been established to plead punitive damages.^{14, 15}

Punitive damages claims are often raised after the initial complaint has been filed. Once a claimant discovers enough evidence that the claimant believes justifies a punitive damages claim, the claimant files a motion to amend the complaint to add a punitive damages action. The trial judge considers the evidence presented and proffered by the claimant to determine whether the claim should proceed.

Current law does not require a showing of admissibility before the proceedings begin or to authorize the claimant and defendant to present evidence before a judge authorizes a claim for punitive damages. Current law contemplates that the claimant will proffer evidence and the court, considering the proffer in the light most favorable to the claimant, will determine whether reasonable basis exists to allow the claimant's punitive damages case to proceed.¹⁶ However, discovery of the defendant's financial worth may not proceed until the pleading on punitive damages is permitted.¹⁷

Individual Liability for Punitive Damages

Section 400.0237(2), F.S., provides:

A defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that the defendant was personally guilty of intentional misconduct¹⁸ or gross negligence.¹⁹

Vicarious Liability for Punitive Damages

Punitive damages claims are sometimes brought under a theory of vicarious liability where an employer is held responsible for the acts of an employee. Section 400.0237(3), F.S., provides that in the case of an employer, principal, corporation, or other legal entity, punitive damages may be imposed for the conduct of an employee or agent only if the conduct of the employee or agent meets certain criteria²⁰ and:

- The employer, principal, corporation, or other legal entity actively and knowingly participated in such conduct;
- The officers, directors, or managers of the employer, principal, corporation, or other legal entity condoned, ratified, or consented to such conduct; or

¹⁴ *Estate of Despain v. Avante Group, Inc.*, 900 So. 2d 637, 642 (Fla. 5th DCA 2005)(internal citations omitted).

¹⁵ The *Despain* court was discussing a prior version of the punitive damages statute relating to nursing home litigation, but the language on proffering in that statute is the same as that in current law.

¹⁶ See *Estate of Despain*, *supra*, note 16.

¹⁷ See s. 400.0237(1)(b), F.S.

¹⁸ "Intentional misconduct" is actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant will result and, despite that knowledge, intentionally pursuing a course of conduct that results in injury or damage. See s. 400.0237(2)(a), F.S.

¹⁹ "Gross negligence" is conduct that is so reckless or wanting in care such that it constitutes a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct. See s. 400.0237(2)(b), F.S.

²⁰ Criteria are whether the defendant was personally guilty of intentional misconduct or gross negligence.

- The employer, principal, corporation, or other legal entity engaged in conduct that constituted gross negligence and that contributed to the loss, damages, or injury suffered by the claimant.

III. Effect of Proposed Changes:

Evidentiary Requirements to Bring a Punitive Damages Claim

The bill provides that a claimant may not bring a claim for punitive damages unless admissible evidence submitted by the parties provides a reasonable basis for the recovery of punitive damages. The bill requires the court to conduct an evidentiary hearing where all parties present evidence. The judge must find that a reasonable basis exists to believe that the claimant will be able to demonstrate, by clear and convincing evidence, that the recovery of punitive damages is warranted. These requirements limit a judge to considering only admissible evidence.

Current law provides that the rules of civil procedure are to be liberally construed to allow the claimant discovery of admissible evidence on the issue of punitive damages. The bill removes that provision from statute. Discovery in civil cases is governed by the Florida Rules of Civil Procedure. Because the rules govern discovery, the effect of removing the provision, if any, is not clear.

The bill clarifies that the claimant may not proceed with discovery on the defendant's financial worth until after the trial judge approves the pleading on punitive damages.

Individual Liability for Punitive Damages

The bill provides that a defendant, including the licensee or management company against whom punitive damages is sought, may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that "a specific person or corporate defendant actively and knowingly participated in intentional misconduct or engaged in conduct that constitutes gross negligence and contributed to the loss, damages, or injury suffered by the claimant."

The bill strikes the current standard jury instructions which provide for punitive damages if the defendant was "personally guilty of intentional misconduct."²¹ The bill requires that the defendant "actively and knowingly participated in intentional misconduct."

Vicarious Liability for Punitive Damages

The bill provides that in the case of vicarious liability of an employer, principal, corporation, or other legal entity, punitive damages may not be imposed for the conduct of an employee or agent unless:

- An identified employee or agent actively and knowingly participated in intentional misconduct, or engaged in conduct that constituted gross negligence, and that conduct contributed to the loss, damages, or injury suffered by the claimant; and

²¹ Standard Jury Instructions in Civil Cases, 503.1, Punitive Damages - Bifurcated Procedure *available at* http://www.floridasupremecourt.org/civ_jury_instructions/instructions.shtml#500 (last visited Mar. 9, 2013).

- Officers, directors, or managers of the actual employer corporation or legal entity condoned, ratified, or consented to the specific conduct alleged.

The bill provides that a state or federal survey report of nursing facilities may not be used to establish an entitlement to punitive damages.

Effective Date

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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. Additional Information:

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

CS/CS by Health Policy on April 16, 2013:

The CS for CS clarifies that the hearing the court must conduct before a plaintiff is allowed to bring a punitive damages claim is evidentiary hearing where all parties submit evidence.

CS by Judiciary on April 1, 2013:

The committee substitute removes section 1 from the underlying bill, which would have amended s. 400.0023, F.S., to:

- Limit the class of persons who may be sued for a violation of a nursing home resident's rights to only the nursing home licensee, a management company employed by a nursing home licensee, or a direct caregiver employee.
- Make certain provisions of law the exclusive remedy against a nursing home licensee management company for a cause of action for the recovery damages for the personal injury or death of a nursing home resident arising out of negligence or a violation of a resident's statutory rights.
- Require the court to hold an evidentiary hearing to determine if sufficient evidence or a reasonable basis exists to find that a person or entity other than the nursing home licensee, the management company for the nursing home, or a direct caregiver owed a specific legal duty to the resident, breached that duty, and the breach of that duty is the legal cause of actual loss, injury, damage, or death to the resident.

- B. **Amendments:**

None.

By the Committees on Health Policy; and Judiciary; and Senator Galvano

588-04476-13

20131384c2

A bill to be entitled

An act relating to nursing home litigation; amending s. 400.0237, F.S.; providing that a claim for punitive damages may not be brought unless there is a showing of admissible evidence proffered by the parties which provides a reasonable basis for recovery of punitive damages when certain criteria are applied; requiring the court to conduct a hearing to determine whether there is sufficient admissible evidence to ensure that there is a reasonable basis to believe that the claimant will be able to demonstrate by clear and convincing evidence that the recovery of punitive damages is appropriate; requiring the trier of fact to find by clear and convincing evidence that a specific person or corporate defendant actively and knowingly participated in intentional misconduct or engaged in conduct that constituted gross negligence and contributed to the loss, damages, or injury suffered by the claimant before punitive damages may be awarded; requiring an officer, director, or manager of the employer, corporation, or legal entity to condone, ratify, or consent to certain specified conduct before holding the licensee vicariously liable for punitive damages; providing an effective date.

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

Section 1. Section 400.0237, Florida Statutes, is amended to read:

Page 1 of 4

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

588-04476-13

20131384c2

400.0237 Punitive damages; pleading; burden of proof.—

(1) (a) In any action ~~for damages~~ brought under this part, a ~~no~~ claim for punitive damages ~~may not be brought shall be permitted~~ unless there is a ~~reasonable~~ showing of admissible by evidence that has been submitted in the record or proffered by the parties and provides ~~claimant which would provide a~~ reasonable basis for recovery of such damages when the criteria in this section are applied. The claimant may move to amend her or his complaint to assert a claim for punitive damages as allowed by the rules of civil procedure in accordance with evidentiary requirements set forth in this section.

(b) The court shall conduct an evidentiary hearing to determine whether there is sufficient admissible evidence submitted by all parties to ensure that there is a reasonable basis to believe that the claimant, at trial, will be able to demonstrate by clear and convincing evidence that the recovery of such damages is warranted. ~~A The rules of civil procedure shall be liberally construed so as to allow the claimant discovery of evidence which appears reasonably calculated to lead to admissible evidence on the issue of punitive damages. No~~ discovery of financial worth may not shall proceed until after the pleading on concerning punitive damages is approved by the court permitted.

(2) A defendant may be held liable for punitive damages only if the trier of fact, ~~by based on~~ clear and convincing evidence, finds that a specific person or corporate defendant actively and knowingly participated in intentional misconduct or engaged in conduct that constitutes gross negligence and contributed to the loss, damages, or injury suffered by the

Page 2 of 4

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

588-04476-13

20131384c2

59 ~~claimant the defendant was personally guilty of intentional~~
60 ~~misconduct or gross negligence.~~ As used in this section, the
61 term:

62 (a) "Intentional misconduct" means that the defendant
63 ~~against whom punitive damages are sought~~ had actual knowledge of
64 the wrongfulness of the conduct and the high probability that
65 injury or damage to the claimant would result and, despite that
66 knowledge, intentionally pursued that course of conduct,
67 resulting in injury or damage.

68 (b) "Gross negligence" means that the defendant's conduct
69 was so reckless or wanting in care that it constituted a
70 conscious disregard or indifference to the life, safety, or
71 rights of persons exposed to such conduct.

72 (3) In the case of vicarious liability of an employer,
73 principal, corporation, or other legal entity, punitive damages
74 may not be imposed for the conduct of an employee or agent
75 unless only if the conduct of a specifically identified the
76 employee or agent meets the criteria specified in subsection (2)
77 and an officer, director, or manager of the actual employer,
78 corporation, or legal entity condoned, ratified, or consented to
79 the specific conduct as alleged in subsection (2). A state or
80 federal survey report of nursing facilities may not be used to
81 establish an entitlement to punitive damages under this section.

82 ~~(a) The employer, principal, corporation, or other legal~~
83 ~~entity actively and knowingly participated in such conduct.~~

84 ~~(b) The officers, directors, or managers of the employer,~~
85 ~~principal, corporation, or other legal entity condoned,~~
86 ~~ratified, or consented to such conduct; or~~

87 ~~(c) The employer, principal, corporation, or other legal~~

588-04476-13

20131384c2

88 ~~entity engaged in conduct that constituted gross negligence and~~
89 ~~that contributed to the loss, damages, or injury suffered by the~~
90 ~~claimant.~~

91 (4) The plaintiff ~~shall~~ ~~must~~ establish at trial, by clear
92 and convincing evidence, its entitlement to an award of punitive
93 damages. The "greater weight of the evidence" burden of proof
94 applies to a determination of the amount of damages.

95 (5) This section is remedial in nature and takes ~~shall take~~
96 effect upon becoming a law.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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4/22/13

Meeting Date

Topic Nursing Home Bill

Bill Number 1384
(if applicable)

Name BRIAN BURSA

Amendment Barcode _____
(if applicable)

Job Title ATTORNEY

Address 3812 COCONUT PALM DRIVE

Phone 813-739-1900

TAMPA, FL 33619
City State Zip

E-mail bbursa@LbysLAW.COM

Speaking: For Against Information

Representing Florida Health Care 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

THE FLORIDA SENATE
APPEARANCE RECORD

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4/22/13

Meeting Date

Topic Nursing Homes

Bill Number SB 1384
(if applicable)

Name Kenneth Thurston

Amendment Barcode _____
(if applicable)

Job Title VICTIM

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Street

Tallahassee

FL

32308

City

State

Zip

E-mail kthurston02@comcast.net

Speaking: For Against Information

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.

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4-22-13

Meeting Date

Topic Nursing Homes

Bill Number SB 1348
(if applicable)

Name Attorney

Amendment Barcode _____
(if applicable)

Job Title ~~6129 Atlantic Blvd~~ Attorney

Address 5129 Atlantic Blvd

Phone 904 723-0030

Street

Jacksonville FL 32211

City

State

Zip

E-mail swatvel@steweatel.com

Speaking: For Against Information

Representing Victims of nursing home abuse

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.

THE FLORIDA SENATE APPEARANCE RECORD

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2/22/2013
Meeting Date

Topic Nursing Homes

Bill Number SB 1384
(if applicable)

Name Christie George

Amendment Barcode —
(if applicable)

Job Title Victim

Address 3101 Percy Rd.
Street
Jax. FL. 32218
City State Zip

Phone 904-695-2692

E-mail George9883@bellsouth.net

Speaking: For Against Information

Representing SELF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

THE FLORIDA SENATE
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4/22/2013

Meeting Date

Topic _____

Bill Number 1384
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

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 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)

04.22.13

Meeting Date

Topic Nursing Home Litigation

Bill Number 1384

(if applicable)

Name William Large

Amendment Barcode _____

(if applicable)

Job Title President

Address 210 South Monroe Street

Phone 850-222-0170

Street

Tallahassee

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32301

E-mail William@fljustice.org

City

State

Zip

Speaking: For Against Information

Representing Florida Justice Reform 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.

THE FLORIDA SENATE

APPEARANCE RECORD

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4/23/13
Meeting Date

Topic _____

Bill Number 1384
(if applicable)

Name Doug Mannheim

Amendment Barcode _____
(if applicable)

Job Title Attorney

Address 215 S. Monroe St. Suite 400
Street
Tallahassee Fl. 32301
City State Zip

Phone 850-681-6810

E-mail _____

Speaking For Against Information

Representing Florida Health Care 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.

THE FLORIDA SENATE
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22 APR 13

Meeting Date

Topic NURSING Home LITIGATION

Bill Number 1384
(if applicable)

Name LAURA CANTWELL

Amendment Barcode _____
(if applicable)

Job Title ASSOCIATE STATE DIRECTOR

Address 200 West College Avenue

Phone 850-577-5163

Street

TALLAHASSEE FL 32301

City

State

Zip

E-mail LCANTWELL@aarp.org

Speaking: For Against Information

Representing AARP

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/22

Meeting Date

Topic NURSING HOMES

Bill Number 1384
(if applicable)

Name BRECHT HEUCHMAN

Amendment Barcode _____
(if applicable)

Job Title GOVT AFFAIRS

Address Po Box 10549

Phone (850) 702-0143

Street Tallahassee State FL Zip 32302
City

E-mail _____

Speaking: For Against Information

Representing WILKES & McHUGH, PA.

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-22-13

Meeting Date

Topic Nursing Home Legislation

Bill Number SB 1384
(if applicable)

Name Barbara DeRane

Amendment Barcode _____
(if applicable)

Job Title Designer / Boblyist / Independent Contractor

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City State Zip

Phone 850-222-3969

E-mail barbaderane1@
yahoo.com

Speaking: For Against Information

Representing Florida Alliance for Retired Americans

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE
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4/22/13

Meeting Date

Topic Patient Care in Nursing Homes

Bill Number 1384
(if applicable)

Name Anthenna Haynes

Amendment Barcode _____
(if applicable)

Job Title CNA

Address 1206 Nth 16th St Apt B Ft. Pierce,
Street
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City State Zip

Phone 772-882-1262

E-mail _____

Speaking: For Against Information

Representing 1199SEIU

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)

4/22/13

Meeting Date

Topic Patient Care in Nursing Homes

Bill Number 1384
(if applicable)

Name Dawn Christie

Amendment Barcode _____
(if applicable)

Job Title Certified nursing Assistant CNA

Address 1065 SW Blaca Ave

Phone 561-288-4189

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Port St Lucie FL 34953

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing 1199 SEIU

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/22/13

Meeting Date

Topic Nursing Home Litigation

Bill Number SB 1384
(if applicable)

Name Carolyn Johnson

Amendment Barcode _____
(if applicable)

Job Title Policy Director

Address 130 S Bronough St
Street
Tallahassee
City State Zip

Phone _____

E-mail cjohnson@
flchamber.com

Speaking: For Against Information

Representing FL 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 time. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 1864

INTRODUCER: Environmental Preservation and Conservation Committee

SUBJECT: Ratification of Rules Implementing Total Maximum Daily Loads for Impaired Water Bodies

DATE: April 18, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hinton	Uchino		ep SPB 7154 as introduced
2.	Hinton	Phelps	RC	Favorable
3.				
4.				
5.				
6.				

I. Summary:

SB 1864 provides for the legislative ratification of a set of rules establishing total maximum daily loads (TMDLs) by the Department of Environmental Protection (DEP) for various impaired waterbodies in the state. A Statement of Estimated Regulatory Costs (SERC) was produced for each rule and because they each have economic impacts that cross certain thresholds described below, they may not go into effect until they are ratified by the Legislature. The scope of the bill is limited to this rulemaking condition and does not adopt the substance of any rule into statute.

This bill only provides for the ratification of this set of rules and does not make any changes to Florida Statutes.

II. Present Situation:

Establishment of TMDLs by the DEP

Under the federal Clean Water Act (CWA), states are required to adopt water quality standards (WQS) for their navigable waters and to review and update those standards at least every three years. These standards must include:

- Designation of a waterbody’s beneficial uses, such as water supply, recreation, fish propagation, or navigation;
- Water quality criteria that define the amounts of pollutants, in either numeric or narrative form, that the waterbody can contain without impairment of the designated beneficial uses; and

- Anti-degradation requirements.¹

When a waterbody is unable to maintain its WQS, it is designated as impaired. For impaired waterbodies, the U. S. Environmental Protection Agency (EPA) or the state must set a TMDL establishing the maximum amount of a given pollutant the waterbody can accept while still meeting WQS associated with its designated use. In Florida, the DEP has the authority to establish TMDLs by the Watershed Restoration Act of 1999.² The DEP periodically submits to EPA a list of waterbodies or segments for which TMDL assessments will be conducted. If the assessments show that a particular waterbody is not meeting its WQS, the DEP is then required to set a TMDL, which is done through rulemaking.³

Adoption of TMDL Rules Submitted for Ratification

The DEP develops a TMDL by:

1. assessing the quality of a particular waterbody;
2. determining if that waterbody falls short of the applicable WQS (and is thus “impaired”);
3. discerning which pollutant(s) may cause the impairment;
4. establishing the TMDL necessary to resolve that impairment; and
5. adopting that TMDL by rule.⁴

The DEP also prepares and makes available online a complete report supporting the determination of one or more TMDLs, depending on the affected waterbodies included in the report.⁵

The DEP organizes all TMDLs under a single chapter of rules.⁶ The chapter is divided into sections representing the different water basins identified in the state, with one exception: Rule 62-304.900, F.A.C., is a new TMDL for mercury that applies statewide to all waterbodies. A TMDL for a particular waterbody is adopted as a subsection of the rule representing the water basin encompassing the particular water segment to which the TMDL applies. For each of the six rules below, the DEP used a single rulemaking proceeding to adopt the listed subsections. As part of each proceeding, the DEP prepared a single SERC showing the specified subsections would require legislative ratification. The following rules have been submitted for ratification during the 2013 Regular Session:

- Rule 62-304.300, “St. Marks River Basin TMDLs”: subsections (3) through (7) were adopted on March 2, 2012.
- Rule 62-304.330, “Pensacola Bay Basin TMDLs”: subsections (10) and (11) were adopted on February 7, 2013.
- Rule 62-304.520, “Indian River Lagoon Basin TMDLs”: subsections (14) through (20) were adopted on March 20, 2013.

¹ 33 U.S.C. s. 1251, et seq.

² Section 403.067, F.S.

³ Section 403.067(2), F.S.

⁴ DEP, *Total Maximum Daily Loads Program*, <http://www.dep.state.fl.us/water/tmdl/index.htm>, (last visited Apr. 6, 2013).

⁵ DEP, *Final TMDL Documents*, http://www.dep.state.fl.us/water/tmdl/final_tmdl.htm, (last visited Apr. 6, 2013); and DEP, *Draft TMDL Documents*, http://www.dep.state.fl.us/water/tmdl/draft_tmdl.htm, (last visited Apr. 6, 2013).

⁶ Chapter 62-304, F.A.C., “Total Maximum Daily Loads.”

- Rule 62-304.610, “Hillsborough River Basin TMDLs”: subsection (12), was adopted on August 20, 2012.
- Rule 62-304.645, “Springs Coast Basin TMDLs”: subsections (13) and (14), were adopted on March 8, 2013.
- Rule 62-304.900, “Statewide TMDLs.” The mercury TMDL was adopted on November 21, 2012.⁷

In the certification submitted to the Department of State when these rules were filed for adoption, the DEP stated that rules regarding TMDLs for Sykes Creek and Goat Creek (Marine Segment), adopted as part of the Indian River Lagoon Basin TMDLs, would not require legislative ratification.⁸

Rulemaking Authority and Legislative Ratification

A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms. Rulemaking authority is delegated by the Legislature through statute and authorizes an agency to adopt, develop, establish, or otherwise create a rule. Unless directed by the Legislature, agencies do not have discretion to engage in rulemaking. To adopt a rule an agency must have a general grant of authority from the Legislature to implement a specific law by rulemaking. The grant of rulemaking authority does not need to be detailed.⁹ The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.¹⁰

An agency begins the formal rulemaking process by filing a notice of the proposed rule. The notice is published by the Department of State in the Florida Administrative Register and must provide certain information, including the text of the proposed rule, a summary of the agency’s SERC, if one is prepared, and how a party may request a public hearing on the proposed rule. Pursuant to s. 120.541(2), F.S., the SERC must include an economic analysis projecting a proposed rule’s adverse effect on specified aspects of the state’s economy or increase in regulatory costs.

The economic analysis mandated for each SERC under s. 120.541, F.S., must analyze a rule’s potential impact over the five year period from when the rule goes into effect. A rule meeting any of these three thresholds must be ratified by the Legislature before it becomes effective:

- If it is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within five years after the implementation of the rule;

⁷ E-mail from Katie Kelly, Deputy Legislative Affairs Director, DEP, (Apr. 8, 2013) (on file with the Senate Committee on Environmental Preservation and Conservation).

⁸ Florida Department of State, *Florida Administrative Register: Proposed Rule 62-304.520*, <https://www.flrules.org/gateway/RuleNo.asp?title=TOTAL%20MAXIMUM%20DAILY%20LOADS&ID=62-304.520> (click on document link for ID 12652794) (last visited Apr. 7, 2013).

⁹ *Save the Manatee Club, Inc.*, *supra* at 599.

¹⁰ *Sloban v. Florida Board of Pharmacy*, 982 So.2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So.2d 696, 704 (Fla. 1st DCA 2001).

- If it is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation, in excess of \$1 million in the aggregate within five years after the implementation of the rule; and
- If it is likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within five years after the implementation of the rule.

Present law distinguishes between a rule being “adopted” and becoming enforceable or “effective.”¹¹ Pursuant to s. 120.54(3), F.S., a rule must be filed for adoption before it may go into effect and cannot be filed for adoption until completion of the rulemaking process.

Impact of Rules

Except for the statewide mercury TMDL, each rule creates the TMDL for one or more specific pollutants for a particular waterbody. While the implementation of each of these separate TMDLs is projected to increase regulatory costs by over \$1 million in the first five years of operation, the adoption of TMDLs by the DEP using a thorough scientific process maintains Florida’s overall compliance with the Clean Water Act and precludes the EPA from setting TMDLs in Florida.

III. Effect of Proposed Changes:

The bill ratifies the included TMDL rules, allowing each to become effective.

Section 1 provides for legislative ratification of the following rules:

- Rule 62-304.300, subsections (3) through (7), F.A.C.;
- Rule 62-304.330, subsections (10) and (11), F.A.C.;
- Rule 62-304.520, subsections (14) through (20), F.A.C.;
- Rule 62-304.610, subsection (12), F.A.C.;
- Rule 62-304.645, subsections (13) and (14), F.A.C.; and
- Rule 62-304.900, F.A.C. (the statewide mercury TMDL).

The bill expressly limits ratification to the rules listed. It also directs that the act shall not be codified in the Florida Statutes but only noted in the historical comments to each rule by the Department of State. Additionally, the bill directs that it does not alter rulemaking authority, does not constitute legislative preemption of or exception to any provision of law governing adoption or enforcement of the rules listed, and does not cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of the legal requirements governing the adoption of any of the cited rules.

Section 2 provides the act goes into effect upon becoming a law.

¹¹ Section 120.54(3)(e)6, F.S. Before a rule becomes enforceable, thus “effective,” the agency first must complete the rulemaking process and file the rule for adoption with the Department of State.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If the rules are ratified, the private sector will begin to bear the costs of compliance for the requirements of the TMDLs. This may be a positive result since the TMDLs will not be set by the EPA, but the effect is indeterminate.

C. Government Sector Impact:

If the rules are not ratified, the EPA may set TMDLs in Florida for these impaired waterbodies. It is beneficial for the state to maintain control of setting TMDLs in Florida instead of relying on the EPA to do so.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

By the Committee on Environmental Preservation and Conservation

592-04036-13

20131864

A bill to be entitled

An act relating to ratification of rules implementing total maximum daily loads for impaired water bodies; ratifying specified rules of the Department of Environmental Protection for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule meeting any of the specified thresholds for likely adverse impact or increase in regulatory costs; providing an effective date.

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

Section 1. (1) The following rules are ratified for the sole and exclusive purpose of satisfying any condition on effectiveness imposed under s. 120.541(3), Florida Statutes:

(a) Subsections (3) through (7) of rule 62-304.300, Florida Administrative Code, entitled "St. Marks River Basin TMDLs," relating to total maximum daily loads for impaired water bodies within the St. Marks River Basin, as filed for adoption with the Department of State pursuant to the certification package dated March 2, 2012.

(b) Subsections (10) and (11) of rule 62-304.330, Florida Administrative Code, entitled "Pensacola Bay Basin TMDLs," relating to total maximum daily loads for impaired water bodies within the Pensacola Bay Basin, as filed for adoption with the Department of State pursuant to the certification package dated February 7, 2013.

(c) Subsections (14) through (20) of rule 62-304.520,

Page 1 of 3

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

592-04036-13

20131864

Florida Administrative Code, entitled "Indian River Lagoon Basin TMDLs," relating to total maximum daily loads for impaired water bodies within the Indian River Lagoon, as filed for adoption with the Department of State pursuant to the certification package dated March 20, 2013.

(d) Subsection (12) of rule 62-304.610, Florida Administrative Code, entitled "Hillsborough River Basin TMDLs," relating to total maximum daily loads for impaired water bodies within the Hillsborough River Basin, as filed for adoption with the Department of State pursuant to the certification package dated August 20, 2012, and as further corrected by the letter from the Department of Environmental Protection to the Department of State dated February 13, 2013.

(e) Subsections (13) and (14) of rule 62-304.645, Florida Administrative Code, entitled "Springs Coast Basin TMDLs," relating to total maximum daily loads for impaired water bodies within the Springs Coast Basin, as filed for adoption with the Department of State pursuant to the certification package dated March 8, 2013.

(f) Rule 62-304.900, Florida Administrative Code, entitled "Statewide TMDLs," relating to a statewide total daily maximum load for mercury-impaired water bodies within the state, as filed for adoption with the Department of State pursuant to the certification package dated November 21, 2012.

(2) This act serves no other purpose and shall not be codified in the Florida Statutes. After this act becomes law, its enactment and effective dates shall be noted in the Florida Administrative Code or the Florida Administrative Register or both, as appropriate. This act does not alter rulemaking

Page 2 of 3

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

592-04036-13

20131864__

59 authority delegated by prior law, does not constitute
60 legislative preemption of or exception to any provision of law
61 governing adoption or enforcement of the rules cited, and is
62 intended to preserve the status of any cited rule as a rule
63 under chapter 120, Florida Statutes. This act does not cure any
64 rulemaking defect or preempt any challenge based on a lack of
65 authority or a violation of the legal requirements governing the
66 adoption of any rule cited.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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4-22-13

Meeting Date

Topic Nutrient criteria

Bill Number 1864
(if applicable)

Name David Moore

Amendment Barcode _____
(if applicable)

Job Title Marion County Commissioner, Dist 1

Address 1124 SE 33rd Ave

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Ocala

FL

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City

State

Zip

marioncountyfl.org

Speaking: For Against Information

Representing Marion County Commission

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.