SB 1700 by **Bean**; (Compare to H 0859) Public Records/Personal Identifying Information/Compassionate Use Registry

SB 1748 by **EP**; (Similar to H 7171) Establishing Minimum Water Flows and Levels for Water Bodies

CS/SB 918 by **HP, Flores (CO-INTRODUCERS) Benacquisto**; (Similar to CS/H 1047) Termination of Pregnancies

CS/CS/SB 1274 by **CA, BI, Hays**; (Compare to CS/CS/H 1089) Citizens Property Insurance Corporation

CS/SB 952 by **CM, Simpson**; (Identical to CS/H 0785) Workers' Compensation

CS/SB 104 by **JU, Soto**; (Identical to CS/CS/H 0755) Family Law

CS/SB 318 by **GO, Stargel**; (Identical to CS/H 0115) Public Meetings/University Direct-support Organization

CS/SB 1008 by **AP, Stargel**; (Similar to CS/H 0609) Article V Constitutional Conventions

CS/SB 1714 by **CA, RI**; (Compare to H 0283) Malt Beverages

497306	D	S	RC, Gardiner	Delete everything after	04/17 03:56 PM
635126	A	S	RC, Smith	Delete L.423:	04/18 12:29 PM

CS/SB 326 by **JU, Thompson**; (Similar to CS/H 0227) Victims of Wrongful Incarceration

904396	A	S	RC, Lee	Delete L.40:	04/18 12:44 PM

CS/SB 372 by **AP, Galvano**; (Similar to H 0241) Developments of Regional Impact

SB 1046 by **Galvano**; (Similar to CS/CS/CS/H 0865) Public Records/Motor Vehicle Crash Reports

596104	D	S	RC, Galvano	Delete everything after	04/08 04:05 PM
585894	A	S	RC, Galvano	Delete L.12 - 45:	04/08 01:55 PM

CS/SB 834 by **GO, Latvala**; (Identical to CS/H 0781) Legal Notices

CS/CS/SB 1320 by **GO, BI, Richter**; (Similar to CS/CS/CS/H 1269) Public Records/Office of Financial Regulation

CS/SB 1672 by **CM, BI**; (Compare to H 0471) Property Insurance

221360	A	S	RC, Simmons	Delete L.834 - 850.	04/17 11:29 AM

CS/SB 870 by **JU, Smith**; (Compare to CS/CS/H 0143) Insurance

541096	A	S	RC, Richter	Delete L.91 - 101:	04/17 10:16 AM

SB 1172 by **Sobel**; (Similar to H 1311) Conveyance of Property Taken by Eminent Domain

HM 281 by **Hill (CO-INTRODUCERS) Smith, Van Zant**; Keystone XL Pipeline

HB 7145 by **RORS, Gaetz**; Ratification of Rules/Department of Health

HB 7163 by **RORS, Gaetz**; Ratification of Rules/Department of Juvenile Justice

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

RULES
Senator Thrasher, Chair
Senator Smith, Vice Chair

MEETING DATE: Monday, April 21, 2014
TIME: 1:00 —4:00 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	**SB 1700** Bean (Compare H 859, S 962, Link CS/S 1030)	Public Records/Personal Identifying Information/Compassionate Use Registry; Exempting from public records requirements personal identifying information of patients and physicians held by the Department of Health in the compassionate use registry; exempting information related to ordering and dispensing low-THC marijuana; providing for future legislative review and repeal; providing a statement of public necessity, etc. HP 04/01/2014 Favorable GO 04/10/2014 Favorable RC 04/21/2014	
2	**SB 1748** Environmental Preservation and Conservation (Similar H 7171)	Establishing Minimum Water Flows and Levels for Water Bodies; Exempting specified rules from legislative ratification under s. 120.541(3), F.S.; requiring the Department of Environmental Protection to publish a certain notice, etc. RC 04/21/2014	
3	**CS/SB 918** Health Policy / Flores (Similar CS/H 1047)	Termination of Pregnancies; Revising the circumstances under which a pregnancy in the third trimester may be terminated; authorizing administrative discipline for a violation of certain provisions by certain licensed professionals; requiring a physician to perform certain examinations to determine the viability of a fetus; prohibiting an abortion of a viable fetus outside of a hospital, etc. HP 03/05/2014 Temporarily Postponed HP 04/01/2014 Fav/CS JU 04/08/2014 Favorable RC 04/21/2014	
4	**CS/CS/SB 1274** Community Affairs / Banking and Insurance / Hays (Compare CS/CS/H 1089, CS/S 1672)	Citizens Property Insurance Corporation; Providing that a condominium association is ineligible for commercial residential wind-only coverage under certain conditions, etc. BI 03/19/2014 Not Considered BI 03/25/2014 Fav/CS CA 04/08/2014 Fav/CS RC 04/21/2014	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	**CS/SB 952** Commerce and Tourism / Simpson (Identical CS/H 785, Compare H 471, CS/CS/H 565, CS/S 1260)	Workers' Compensation; Authorizing employers to negotiate the retrospectively rated premium with insurers under certain conditions, etc. BI 03/11/2014 Favorable CM 04/07/2014 Fav/CS RC 04/21/2014	
6	**CS/SB 104** Judiciary / Soto (Identical CS/CS/H 755)	Family Law; Providing for consideration of time-sharing schedules or time-sharing arrangements as a factor in the adjustment of awards of child support; authorizing judges in family cases to take judicial notice of certain court records without prior notice to the parties when imminent danger to persons or property has been alleged and it is impractical to give prior notice; providing for a deferred opportunity to present evidence; creating an exception to a prohibition against using evidence other than the verified pleading or affidavit in an ex parte hearing for a temporary injunction for protection against domestic violence, repeat violence, sexual violence, dating violence, or stalking, etc. JU 04/01/2014 Fav/CS CF 04/08/2014 Favorable RC 04/21/2014	
7	**CS/SB 318** Governmental Oversight and Accountability / Stargel (Identical CS/H 115)	Public Meetings/University Direct-support Organization; Providing an exemption from public meeting requirements for any portion of a meeting of the board of directors of a university direct-support organization, or of the executive committee or other committees of such board, at which any proposal seeking research funding from the organization or a plan or program for either initiating or supporting research is discussed; providing for review and repeal of the exemption; providing a statement of public necessity, etc. ED 01/08/2014 Favorable GO 03/13/2014 Fav/CS RC 04/21/2014	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	**CS/SB 1008** Appropriations / Stargel (Similar CS/H 609)	Article V Constitutional Conventions; Citing this act as the "Article V Constitutional Convention Act"; establishing qualifications of delegates and alternate delegates to an Article V constitutional convention; providing for the appointment of delegates by the Legislature; requiring majority vote approval in each chamber for the appointment of delegates; authorizing the Legislature to recall a delegate and fill a vacancy; authorizing the presiding officers of the Legislature to call a special legislative session to fill a vacancy; establishing a legislative method for appointments and recalls, etc. JU 04/08/2014 Favorable AP 04/10/2014 Fav/CS RC 04/21/2014	
9	**CS/SB 1714** Community Affairs / Regulated Industries (Compare H 283, CS/H 1329, H 7075, CS/S 406)	Malt Beverages; Clarifying three-tier system exceptions and application with respect to the manufacture, distribution, and sale of malt beverages; revising requirements for licensure and operation of manufacturers and vendors; adding an exception to the come-to-rest requirement; authorizing the possession and transportation of a growler; providing requirements for and limitations on the filling, refilling, and sale or distribution of growlers, etc. CA 04/08/2014 Fav/CS RC 04/21/2014	
10	**CS/SB 326** Judiciary / Thompson (Similar CS/H 227)	Victims of Wrongful Incarceration; Providing that a wrongfully incarcerated person who was convicted and sentenced to death on or before December 31, 1979, is exempt from certain application procedures for compensation if a special prosecutor issues a nolle prosequi after reviewing the defendant's conviction; requiring the claimant to file an application with the Department of Legal Affairs within a specified time; requiring the application to include certain information and documents; providing that the claimant is entitled to compensation if all requirements are met, etc. JU 02/11/2014 Fav/CS CJ 03/03/2014 Favorable AP 03/13/2014 Favorable RC 04/21/2014	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	**CS/SB 372** Appropriations / Galvano (Similar H 241)	Developments of Regional Impact; Deleting certain exemptions for dense urban land areas; revising the exemption for any proposed development within a county that has a population of at least 300,000 and an average population of at least 400 people per square mile; exemping certain developments from certain statewide standards and guidelines, etc. CA 02/04/2014 Favorable ATD 02/19/2014 Fav/CS AP 03/27/2014 Fav/CS RC 04/09/2014 Temporarily Postponed RC 04/21/2014	
12	**SB 1046** Galvano (Similar CS/CS/CS/H 865, Compare CS/H 863, Link CS/S 876)	Public Records/Motor Vehicle Crash Reports; Providing an exemption from public records requirements for certain personal contact information contained in motor vehicle crash reports; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. TR 03/13/2014 Favorable GO 04/03/2014 Favorable RC 04/09/2014 Temporarily Postponed RC 04/21/2014	
13	**CS/SB 834** Governmental Oversight and Accountability / Latvala (Identical CS/H 781)	Legal Notices; Requiring legal notices to be posted on a newspaper's website on web pages with specified titles; prohibiting charging a fee or requiring registration for viewing online legal notices; establishing the period for which legal notices are required to be published on the statewide website; requiring that legal notices be archived on the statewide website for a specified period; deleting a provision relating to harmless error; clarifying payment provisions, etc. GO 03/13/2014 Fav/CS JU 04/01/2014 Favorable AP 04/10/2014 Favorable RC 04/21/2014	
14	**CS/CS/SB 1320** Governmental Oversight and Accountability / Banking and Insurance / Richter (Similar CS/CS/CS/H 1269, Compare CS/CS/CS/H 1267, Link CS/S 1238)	Public Records/Office of Financial Regulation; Providing an exemption from public records requirements for certain information held by the Office of Financial Regulation relating to a family trust company, licensed family trust company, or foreign licensed family trust company; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. BI 03/25/2014 Fav/CS GO 04/10/2014 Fav/CS RC 04/21/2014	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
15	**CS/SB 1672** Commerce and Tourism / Banking and Insurance (Compare H 471, CS/CS/H 565, CS/CS/H 1089, CS/CS/H 1109, CS/S 1260, CS/CS/S 1274)	Property Insurance; Prohibiting a public adjuster or public adjuster apprentice from choosing the persons or entities that will perform repair work; postponing the date that new construction or substantial improvement is not eligible for coverage by the corporation; requiring the corporation to cease offering new commercial residential policies providing multiperil coverage after a certain date and providing that the corporation continue offering commercial residential wind-only policies, etc. CM 04/07/2014 Fav/CS RC 04/21/2014	
16	**CS/SB 870** Judiciary / Smith (Compare CS/CS/H 143, CS/H 375, CS/S 346)	Insurance; Providing that the absence of a countersignature does not affect the validity of a policy or contract; providing that a county may enact and enforce ordinances applicable to certain health care clinics; authorizing reciprocal insurers to return a portion of unassigned funds to their subscribers; revising provisions relating to the levy of assessments on insurers by the Florida Insurance Guaranty Association, etc. BI 03/11/2014 Favorable JU 03/25/2014 Not Considered JU 04/01/2014 Fav/CS RC 04/21/2014	
17	**SB 1172** Sobel (Similar H 1311)	Conveyance of Property Taken by Eminent Domain; Authorizing a condemning authority to convey, without restriction, lands condemned for specific noise mitigation or noise compatibility programs at certain large hub airports to a person or private entity, etc. CA 03/25/2014 Favorable JU 04/08/2014 Favorable RC 04/21/2014	
18	**HM 281** Hill	Keystone XL Pipeline; Urges the President of the United States to issue final approval for construction & completion of Keystone XL pipeline. RC 04/21/2014	
19	**HB 7145** Rulemaking Oversight and Repeal Subcommittee / Gaetz	Ratification of Rules/Department of Health; Ratifies specified DOH rules requiring certain trauma centers to maintain participation in specified trauma quality improvement program, for sole & exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S.. RC 04/21/2014	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
20	**HB 7163** Rulemaking Oversight and Repeal Subcommittee / Gaetz	Ratification of Rules/Department of Juvenile Justice; Ratifies specified DJJ rules relating to provision of health services to youth in facilities or programs, for sole & exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S. RC 04/21/2014	
	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:	SB 1700
INTRODUCER:	Senator Bean
SUBJECT:	Public Records/Personal Identifying Information/Compassionate Use Registry
DATE:	April 17, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Favorable**
2.	Kim	McVaney	GO	**Favorable**
3.	Looke	Phelps	RC	**Pre-meeting**

I. Summary:

SB 1700 makes patient and physician personal identifying information held by the Department of Health (DOH) in the compassionate use registry[1] (registry) confidential and exempt from the public records requirements of section 119.07(1), F.S., and article I, section 24(a) of the Florida Constitution. The bill allows law enforcement agencies, low-THC marijuana dispensing organizations, physicians, the DOH's relevant health care regulatory boards, and persons engaged in bona fide research to access the information in the registry under certain circumstances. The bill also requires that such confidential information remain confidential once released from the registry and provides penalties for violating the provisions of the exemption.

This bill is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reviewed and reenacted by the Legislature.

The bill contains a public necessity statement as required by the Florida Constitution.

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

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

[1] That will be established under s. 456.60, F.S., if CS/SB 1030 passes.

employee of the state, or of persons acting on their behalf.[2] The records of the legislative, executive, and judicial branches are specifically included.[3]

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act[4] guarantees every person's right to inspect and copy any state or local government public record[5] at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[6]

Only the Legislature may create an exemption to public records requirements.[7] Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.[8] 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 provisions[9] and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[10]

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.[11] It requires the automatic repeal of such exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[12] 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.[13]

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[2] FLA. CONST., art. I, s. 24(a).
[3] *Id*.
[4] Chapter 119, F.S.
[5] 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)).
[6] Section 119.07(1)(a), F.S.
[7] 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 (s*ee 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).
[8] FLA. CONST., art. I, s. 24(c).
[9] The bill may, however, contain multiple exemptions that relate to one subject.
[10] FLA. CONST., art. I, s. 24(c).
[11] 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.).
[12] Section 119.15(3), F.S.
[13] Section 119.15(6)(b), F.S.

The Compassionate Use Registry

SB 1700 is the public records bill linked to CS/SB 1030, which creates s. 456.60 of the Florida Statutes. CS/SB 1030 requires the DOH to create a compassionate use registry that will be a secure, electronic, and online registry of physicians and patients who order and use low-THC marijuana. Dispensing organizations will be required to verify physician orders and to record the date, time, quantity and form of the low-THC marijuana they dispense. The registry will be designed so that multiple doctors will not be able to register the same patients.

III. Effect of Proposed Changes:

Section 1 creates s. 456.61, F.S., to make confidential and exempt from the public records requirements of s. 119.07(1), F.S., and article I, section 24(a) of the Florida Constitution any patient and physician identifying information in the compassionate use registry. The bill specifically exempts a registered patient's and physician's name, address, telephone number, and government issued identification number. In addition, the ordering physician's Drug Enforcement Administration (DEA) number and all information pertaining to the physician's order for low-THC marijuana are confidential and exempt.

The following entities will have access to confidential and exempt information:

- A law enforcement agency that is investigating a violation of law regarding cannabis if the subject of the investigation claims he, she or it is acting within the parameters of s. 456.60, F.S.;
- A dispensing organization attempting to verify the authenticity of a physician's order for low-THC marijuana;
- A physician ordering low-THC marijuana for his or her patient;
- The DOH for the purpose of maintaining the registry;
- Health care regulatory boards investigating a physician for a violation of s. 456.60, F.S. If a board uncovers criminal activity, the board may provide relevant information to the appropriate law enforcement agency; and
- Researchers approved by the DOH, who agree to maintain the confidentiality of the information they receive and agree not to contact a patient or physician whose information is in the registry.

The bill states that all information that is released from the registry remains confidential and exempt and requires any person receiving information from the registry to maintain the confidentiality of that information. Any person who willingly and knowingly violates a provision of this exemption commits a third degree felony.

The bill also provides for the automatic repeal of the exemption on October 2, 2019, unless reenacted by the Legislature.

Section 2 provides legislative findings. The bill states that the Legislature finds it is a public necessity to protect the information in the compassionate use registry in order to protect the privacy of patients who choose to use low-THC marijuana and physicians who choose to order it. The Legislature finds that the public availability of registry information could make the public

aware of a patient's medical diseases or conditions and may also open patients and physicians up to discrimination for their use or ordering of low-THC marijuana.

Section 3 establishes an effective date that is the same as the effective date of CS/SB 1030 or similar legislation passed in the same legislative session. The bill only takes effect if CS/SB 1030, or similar legislation, is passed and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for passage of a newly-created or expanded public records or public meetings exemption. As such, this bill requires a two-thirds vote for passage.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly-created or expanded public records or public meetings exemption. As such, this bill 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 fiscal and technological impact of developing and maintaining a new registry for low-THC marijuana is indeterminate. In all likelihood, the cost of maintaining public records and responding to public records requests will be absorbed by the program.[14]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 456.61 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

[14] 2014 Agency Legislative Bill Analysis for SB 1030 from the Department of Health, on file with the Senate Committee on Governmental Oversight and Accountability.

By Senator Bean

4-02537B-14 20141700__

A bill to be entitled

An act relating to public records; creating s. 456.61, F.S.; exempting from public records requirements personal identifying information of patients and physicians held by the Department of Health in the compassionate use registry; exempting information related to ordering and dispensing low-THC marijuana; authorizing specified persons and entities access to the exempt information; requiring that information released from the registry remain confidential; providing a criminal penalty; providing for future legislative review and repeal; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Section 456.61, Florida Statutes, is created to read:

456.61 Public records exemption for personal identifying information in the compassionate use registry.—

(1) A patient's personal identifying information held by the department in the compassionate use registry established under s. 456.60, including, but not limited to, the patient's name, address, telephone number, and government-issued identification number, and all information pertaining to the physician's order for low-THC marijuana and the dispensing thereof are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

4-02537B-14 20141700__

(2) A physician's identifying information held by the department in the compassionate use registry established under s. 456.60, including, but not limited to, the physician's name, address, telephone number, government-issued identification number, and Drug Enforcement Administration number, and all information pertaining to the physician's order for low-THC marijuana and the dispensing thereof are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(3) The department shall allow access to the registry, including access to confidential and exempt information, to:

(a) A law enforcement agency that is investigating a violation of law regarding cannabis in which the subject of the investigation claims an exception established under s. 456.60.

(b) A dispensing organization approved by the department pursuant to s. 456.60(3)(b) which is attempting to verify the authenticity of a physician's order for low-THC marijuana, including whether the order had been previously filled and whether the order was written for the person attempting to have it filled.

(c) A physician who has written an order for low-THC marijuana for the purpose of monitoring the patient's use of such marijuana or for the purpose of determining, before issuing an order for low-THC marijuana, whether another physician has ordered the patient's use of low-THC marijuana. The physician may access the confidential and exempt information only for the patient for whom he or she has ordered or is determining whether to order the use of low-THC marijuana pursuant to s. 456.60.

(d) An employee of the department for the purposes of

maintaining the registry and periodic reporting or disclosure of information that has been redacted to exclude personal identifying information.

(e) The department's relevant health care regulatory boards responsible for the licensure, regulation, or discipline of a physician if he or she is involved in a specific investigation of a violation of s. 456.60. If a health care regulatory board's investigation reveals potential criminal activity, the board may provide any relevant information to the appropriate law enforcement agency.

(f) A person engaged in bona fide research if the person agrees:

1. To submit a research plan to the department which specifies the exact nature of the information requested and the intended use of the information;

2. To maintain the confidentiality of the records or information if personal identifying information is made available to the researcher;

3. To destroy any confidential records or information obtained after the research is concluded; and

4. Not to contact, directly or indirectly, for any purpose, a patient or physician whose information is in the registry.

(4) All information released from the registry under subsection (3) remains confidential and exempt, and a person who receives access to such information must maintain the confidential status of the information received.

(5) A person who willfully and knowingly violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that identifying information of patients and physicians held by the Department of Health in the compassionate use registry established under s. 456.60, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Specifically, the Legislature finds that it is a public necessity to make confidential and exempt from public records requirements the names, addresses, telephone numbers, and government-issued identification numbers of patients and physicians and any other information on or pertaining to a physician's order for low-THC marijuana written pursuant to s. 456.60, Florida Statutes, which are held in the registry. The choice made by a physician and his or her patient to use low-THC marijuana to treat that patient's medical condition or symptoms is a personal and private matter between those two parties. The availability of such information to the public could make the public aware of both the patient's use of low-THC marijuana and the patient's diseases or other medical conditions for which the patient is using low-THC marijuana. The knowledge of the patient's use of low-THC marijuana, the knowledge that the physician ordered the use of low-THC marijuana, and the knowledge of the patient's medical condition could be used to embarrass, humiliate, harass, or discriminate against the patient and the physician. This information could be used as a

discriminatory tool by an employer who disapproves of the patient's use of low-THC marijuana or of the physician's ordering such use. However, despite the potential hazards of collecting such information, maintaining the compassionate use registry established under s. 456.60, Florida Statutes, is necessary to prevent the diversion and nonmedical use of any low-THC marijuana as well as to aid and improve research done on the efficacy of low-THC marijuana. Thus, the Legislature finds that it is a public necessity to make confidential and exempt from public records requirements the identifying information of patients and physicians held by the Department of Health in the compassionate use registry established under s. 456.60, Florida Statutes.

Section 3. This act shall take effect on the same date that SB 1030, or similar legislation establishing an electronic system to record a physician's orders for, and a patient's use of, low-THC marijuana takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 1748
INTRODUCER:	Environmental Preservation and Conservation Committee
SUBJECT:	Rules Establishing Minimum Water Flows and Levels for Water Bodies
DATE:	April 17, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Hinton	Uchino		**EP SPB 7126 as introduced**
1.	Hinton	Phelps	RC	**Pre-meeting**

I. Summary:

SPB 7126 exempts Department of Environmental Protection (DEP) rules establishing minimum flows and levels (MFLs) for the Lower Santa Fe and Ichetucknee Rivers, and associated priority springs, from legislative ratification. It requires the DEP to publish a notice of enactment in the Florida Administrative Register.

II. Present Situation:

Minimum Flows and Levels

MFLs are established for water bodies in order to prevent significant harm as a result of permitted water withdrawals. MFLs are typically determined based on evaluations of topography, soils, and vegetation data collected within plant communities, and other pertinent information associated with the water resource. MFLs take into account the ability of wetlands and aquatic communities to adjust to changes in hydrologic conditions and allow for an acceptable level of hydrologic change to occur. When use of water resources shifts the hydrologic conditions below levels defined by MFLs, significant ecological harm can occur.[1]

The consumptive use of water can draw down water levels and reduce pressure in the aquifer.[2] By establishing MFLs for non-consumptive uses,[3] the water management districts (WMDs) can determine how much water is available for consumptive uses.

Section 373.042, F.S., requires the DEP or WMDs to establish MFLs for priority water bodies to prevent significant harm from water withdrawals. MFLs are considered rules and are subject to

[1] St. Johns River Water Management District, *Water Supply: An Overview of Minimum Flows and Levels*, http://www.sjrwmd.com/minimumflowsandlevels/ (last visited Apr. 10, 2014).
[2] Department of Community Affairs, *Protecting Florida's Springs: An Implementation Guidebook*, 3-5 (Feb. 2008), *available at* http://www.dep.state.fl.us/springs/reports/files/springsimplementguide.pdf (last visited Apr. 10, 2014).
[3] Examples of consumptive uses include agricultural irrigation, public water supply, golf course irrigation, mining, and power generation. Non-consumptive uses of water include recreational, aesthetic, and navigational uses of water resources.

ch. 120, F.S., challenges. MFLs are established by the DEP, in coordination with the applicable WMD, using the best available data and are subject to independent scientific peer review at the request of the WMD, or, if requested, by a third party.[4]

MFLs apply to decisions affecting permit applications, declarations of water shortages, and assessments of water supply sources. Computer water budget models for surface waters and groundwater are used to evaluate the effects of existing and/or proposed consumptive uses and the likelihood they might cause significant harm. The WMD governing boards are required to develop recovery or prevention strategies in those cases where a water body or watercourse is violating an MFL, or is anticipated to not meet an MFL within 20 years. Water uses cannot be permitted that cause an MFL to be violated.[5]

Recovery or Prevention Strategy

Recovery or prevention strategies are established to recover a water body so that it meets its MFL, or to prevent the existing flow or level from falling below its MFL within 20 years.[6] The recovery or prevention strategies include phasing or a timetable that allows for the development of sufficient water supplies for all existing and projected reasonable-beneficial uses. The strategy also includes development of additional water supplies and implementation of conservation strategies, the use of impact offsets, and other efficiency measures to accommodate withdrawals.[7]

Consumptive Use Permits

Consumptive use permits (CUPs) establish the duration and type of consumptive water use as well as the maximum amount of water that may be withdrawn daily.[8] Each CUP must be consistent with the objectives of the issuing WMD, or the DEP, and may not be harmful to the water resources of the area.[9] To obtain a CUP, an applicant must establish that the proposed use of water satisfies a statutory test, commonly referred to as "the three-prong test." Specifically, the proposed water use must:

- Be a "reasonable-beneficial use;"[10]
- Not interfere with any presently existing legal use of water; and
- Be consistent with the public interest.[11]

Regional Water Supply Planning

WMDs are required to conduct water supply needs assessments. If the assessment determines that existing resources will not be sufficient to meet reasonable-beneficial uses for the planning

[4] Section 373.042, F.S.
[5] *Supra* note 1.
[6] Section 373.0421, F.S. See also Rule 62-40.473, F.A.C.
[7] Rule 62-40.473(6), F.A.C.
[8] See Rule 40C-2, F.A.C.
[9] Section 373.219, F.S.
[10] Section 373.019(16), F.S. Reasonable-beneficial use is defined as, "the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest." See also Rule 62-40.410(2), F.A.C., for a list of 18 factors to help determine whether a water use is a reasonable-beneficial use.
[11] Section 373.223(1), F.S.

period for a particular water supply planning region, it must prepare a regional water supply plan.[12] Regional water supply plans must be based on at least a 20-year planning period and must include:

- A water supply development component;
- A water resource development component;
- A recovery and prevention strategy;
- A funding strategy;
- Consideration of how water supply development projects serve the public interest or save costs;
- Technical data and information;
- Any MFLs established for the planning region;
- The water resources for which future MFLs must be developed; and
- An analysis of where variances may be used to create water supply development or water resource development projects.[13]

Mobile Irrigation Labs

Mobile Irrigation Labs (MILs) consist of one or two person teams that provide site-specific evaluation and analysis of irrigation systems. They also provide recommendations on the improvement of existing irrigation systems and equipment, and education on water conservation, irrigation planning, and irrigation management. MILs operate within all five WMDs and are supported by three of the WMDs, the Department of Agriculture and Consumer Services, the Natural Resources Conservation Service, certain counties, and certain utilities in the state.[14]

After evaluating a particular agricultural operation, the MIL provides a report to operation that recommends improvements and irrigation schedules. The schedules offer general guidelines to determine when and how much to irrigate based on system efficiency, crop requirements, and soil characteristics. The program provides for follow-up visits to collect more data and install free soil moisture-sensing devices to help growers adapt the schedule to the site. The program also provides training for farmers to calibrate and maintain the equipment.[15]

The North Florida Southeast Georgia Regional Groundwater Flow Model

The North Florida Southeast Georgia (NFSEG) Regional Groundwater Flow Model is currently in development. The general goal of the model is to construct a groundwater flow model that will aid in the assessment of climatic and anthropogenic effects on the groundwater resources of north Florida and southeast Georgia.[16] It will also provide a regional framework for the

[12] Section 373.709(1), F.S.
[13] Section 373.709(2), F.S.
[14] Department of Agriculture and Consumer Services, *Evaluate Your Irrigation System*, http://www.freshfromflorida.com/Divisions-Offices/Agricultural-Water-Policy/Evaluate-Your-Irrigation-System (last visited Apr. 10, 2014).
[15] DEP, *Statement of Estimated Regulatory Costs*, 24 (Apr. 8, 2015), *available at* http://www.dep.state.fl.us/water/waterpolicy/docs/mflrulemaking/serc_04_08_2014.pdf (last visited Apr. 10, 2014).
[16] North Florida Regional Water Supply Partnership, *North Florida Southeast Georgia (NFSEG) Regional Groundwater Flow Model: Goals and Objectives Technical Memo*, *available at* http://northfloridawater.com/pdfs/NFSEG/NFSEG_goals_objectives_final.pdf (last visited Apr. 10, 2014).

development and application of models for use in assessments of "critical areas of concern."[17] A "critical area of concern" is an area where there is a particular concern regarding drawdown impacts due to regional and/or local pumping effects. Areas that have been identified as critical areas of concern in the NFSEG Regional Groundwater Flow Model include:

- The Upper Santa Fe Basin;
- The Lower Santa Fe Basin;
- The Upper Suwannee River Basin;
- The Alapaha River Basin; and
- The Upper Etonia Creek Basin.[18]

The flow model must be designed and applied such that it will aid in pinpointing the exact sources of impacts on the basin and determine the relative contributions of the various parties involved. One of the ongoing problems the model will be designed to address more accurately is separating climatic impacts from anthropogenic impacts.[19]

Legislative Ratification of Agency Rules

Pursuant to s. 120.541, F.S., a rule that meets at least one of three thresholds must be ratified by the Legislature. Those are:

- If the rule 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;
- If the rule 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; or
- If the rule 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.[20]

If a rule requires ratification by the Legislature, the rule must be submitted to the President of the Senate and Speaker of the House of Representatives no later than 30 days prior to the regular legislative session. The rule may not go into effect until it is ratified by the Legislature.[21]

Statement of Estimated Regulatory Costs

According to the DEP's statement of estimated regulatory costs for the proposed MFL rule for the Suwannee River and St. Johns River WMDs, applicants for new CUPs or CUP renewals may be affected by the rule, if the CUP has the potential to impact the MFL.[22] During the next five years, the DEP anticipates approximately 28 agricultural water use permit holders will be required to provide offsets under the proposed rule, requiring a total offset of 2.6 million gallons per day (mgd). The DEP also anticipates that, of new permit requests over the next five years,

[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] Section 120.541(2)(a)1.-3., F.S.
[21] Section 120.541(3), F.S.
[22] *Supra* note 15, at 1-2.

approximately 40 agricultural users impacted by the rule will have to provide total offsets of 11.2 mgd. The anticipated offset required to accommodate both groups will be 13.8 mgd.[23]

If the entire amount of water is offset by implementing additional agricultural water conservation measures via retrofitting center pivot irrigation systems to make them more efficient, the total cost will approach $3 million over five years.[24] Because the Suwannee River WMD cost-share program typically covers 80 percent of retrofit costs, the actual regulatory burden will likely be significantly less.[25] Other possible methods, such as changing withdrawal locations, farming practices, or crop rotation, are difficult to project expected costs for. The development of alternative water supplies for agricultural use as an option to provide offsets will likely be significantly limited by cost and feasibility.[26]

Proposed Rule 62-42.300 F.A.C.

Proposed Rule 62-42.300, Florida Administrative Code (F.A.C.), establishes MFLs for the Lower Santa Fe and Ichetucknee Rivers and associated priority springs.[27] The proposed rule limits the duration of renewed CUPs for existing users that do not request additional allocations to five years if the requested allocation has the potential to affect MFLs in the Ichetucknee or Lower Santa Fe Rivers. CUPs may be issued for longer than five years if the permittee demonstrates that the proposed allocations' impacts on the MFLs will be eliminated or offset.

For a CUP holder that applies for additional allocations in its renewal application that may impact the MFLs in the Ichetucknee or Lower Santa Fe Rivers, the applicant must provide reasonable assurance of elimination or offset of that portion of the requested allocation that exceeds the existing allocation and that results in potential impacts to those water bodies. Such CUPs will be issued for five years unless the potential impacts to the MFLs will be eliminated or offset.

For new CUP applications that impact the MFLs, the entity requesting the permit must provide reasonable assurance that any potential impacts will be eliminated or offset. For existing authorized uses, permits will not be subject to modification unless provided for in future rule revisions.

The rule provides for two special conditions on certain CUPs. For a CUP that is issued for more than five years, it must contain a provision stating that the CUP is subject to modification during the term of the permit, upon reasonable notice by the WMD, to achieve compliance with any approved MFL recovery or prevention strategy. The second provision provides that for new or renewed agricultural CUPs in Columbia, Suwannee, Union, and Gilchrist Counties, and portions of Baker, Bradford, and Alachua Counties, within the boundaries of the SRWMD, the permittee must participate in an MIL program and allow access to the project site for the purpose of conducting an MIL evaluation at least once every five years.

[23] *Supra* note 15, at 15.
[24] *Supra* note 15, at 17.
[25] *Supra* note 15, at 16.
[26] *Supra* note 15, at 23.
[27] Lower Santa Fe priority springs are: Santa Fe Rise, ALA112971, Hornsby, Columbia, Poe, COL 101974, Rum Island, July, Devil's Ear, and GIL.1012973. Ichetucknee River priority springs are: Ichetucknee Head, Blue Hole, Mission, Devil's Eye, Grassy Hole, and Mill Pond.

By the publication date of the final peer review report on the NFSEG Regional Groundwater Flow Model, or by December 31, 2019, whichever is earlier, the DEP must:

- Publish a Notice of Proposed Rule to strike Rule 62-42.300(a)-(d), F.A.C., which establishes the MFLs for the Lower Santa Fe and Ichetucknee Rivers and associated priority springs;
- Re-propose MFLs for the Lower Santa Fe and Ichetucknee Rivers and associated priority springs along with any associated recovery or prevention strategies; and
- Adopt the proposed rule in accordance with the timeframes provided in section 120.54(3), F.S.

According to the DEP, the Lower Santa Fe and Ichetucknee Rivers and associated priority springs need increased flows to meet their MFLs.[28] While these rules would normally be ratified by the Legislature, a request for a rule adoption hearing has been received and it may not be possible to obtain legislative ratification during the 2014 Regular Legislative Session. The DEP finds that it is critical that the MFL rules take effect as soon as possible because a delay in ratification could further exacerbate the condition of the Santa Fe and Ichetucknee Rivers and associated priority springs.[29]

III. Effect of Proposed Changes:

The bill exempts Rule 62-42.300, F.A.C., from legislative ratification. The rule establishes MFLs for the Lower Santa Fe and Ichetucknee Rivers and associated priority springs.

The bill specifies that it:

- Serves no other purpose than exempting Rule 62-42.300, F.A.C., from ratification and may not be codified in the Florida Statutes;
- Requires the DEP to publish a notice of the enactment of the exemption in the Florida Administrative Register as soon as the rule is filed for adoption, or as soon thereafter as practicable;
- Does not alter rulemaking authority or constitute a legislative preemption of, or exception to, any other provision of law regarding adoption or enforcement of the rule; 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 rule cited.

The bill will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[28] DEP, *General MFL Info on Exemption* (Mar. 18, 2014) (on file with the Senate Committee on Environmental Preservation and Conservation).
[29] *Id.*

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:

For CUP renewal applications that affect the MFL for the Ichetucknee and Lower Santa Fe Rivers, if permittees are limited to five year permits, there could be an increase in costs for more frequent permit renewals. The DEP estimates that the total amount of additional application fees will be approximately $9,000.

According to the DEP, for agricultural users over the next five years who receive new CUPs and those who renew their permits, the estimated cost will approach $3 million for those allocations that affect the MFL for the Lower Santa Fe and Ichetucknee Rivers and associated priority springs. Cost-sharing programs will likely reduce this cost; however the exact reduction cannot be determined at this time.

CUP restrictions could force agricultural users to diversify their farming practices or implement water conservation measures. The economic impact will be determined by the activities of affected users to accommodate any restrictions placed on operations.

For agricultural operations whose costs increase due to the rule, the increased costs of compliance could result in those costs being passed on to consumers.

C. Government Sector Impact:

Any offsets required under the MFL that are eligible for cost-sharing could result in an increase in costs, depending on the number of projects that qualify for cost-sharing. This effect is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates an undesignated section of Florida law.

IX. Additional Information:

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

None.

B. Amendments:

None.

By the Committee on Environmental Preservation and Conservation

592-04179-14 20141748__

A bill to be entitled

An act relating to establishing minimum water flows and levels for water bodies; exempting specified rules from legislative ratification under s. 120.541(3), F.S.; requiring the Department of Environmental Protection to publish a certain notice; providing an effective date.

WHEREAS, on March 7, 2014, the Department of Environmental Protection proposed rules 62-42.100 and 62-42.200, Florida Administrative Code, establishing the scope and definitions for minimum flows and levels adopted by the department, and rule 62-42.300, Florida Administrative Code, establishing minimum flows and levels for the Lower Santa Fe and Ichetucknee Rivers and associated priority springs, and

WHEREAS, on April 8, 2014, the department published a Notice of Change, modifying its proposed rule 62-42.300, Florida Administrative Code, establishing minimum flows and levels for the Lower Santa Fe and Ichetucknee Rivers and associated priority springs, and

WHEREAS, such rules will implement the public policy established in s. 1, chapter 2013-229, Laws of Florida, and related laws authorizing the department to establish minimum flows and levels for water bodies that affect multiple water management districts, and

WHEREAS, after adoption by the department, rule 62-42.300, Florida Administrative Code, requires legislative ratification pursuant to s. 120.541(3), Florida Statutes, and

WHEREAS, a challenge filed in the Division of

592-04179-14 20141748__

Administrative Hearings has delayed adoption of rule 62-42.300, Florida Administrative Code, by the department, making the rule unavailable for ratification during the 2014 Regular Session, and

WHEREAS, it is important that these rules take effect as soon as possible so that associated flow protection rules can be implemented as soon as possible, and

WHEREAS, exempting proposed rule 62-42.300, Florida Administrative Code, from legislative ratification will allow the rules, if otherwise valid, to become effective before the next opportunity for legislative ratification, NOW, THEREFORE,

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

Section 1. (1) The rule proposed by the Department of Environmental Protection as rule 62-42.300, Florida Administrative Code, entitled "Minimum Flows and Levels and Recovery and Prevention Strategies," which was published on March 7, 2014, in the Florida Administrative Register, Vol. 40, No. 46, pages 1069-1071, and modified by a Notice of Change, published on April 8, 2014, in the Florida Administrative Register, Vol. 40, No. 68, page 1536, is exempt from ratification under s. 120.541(3), Florida Statutes.

(2) This act serves no other purpose and may not be codified in the Florida Statutes. At the time of filing this rule for adoption, or as soon thereafter as practicable, the department shall publish a notice of the enactment of this exemption in the Florida Administrative Register. This act does not alter rulemaking authority delegated by prior law and does

not constitute legislative preemption of or exception to any other provision of law governing adoption or enforcement of the rule cited. This act 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 rule cited.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 918
INTRODUCER:	Health Policy Committee and Senator Flores
SUBJECT:	Termination of Pregnancies
DATE:	April 17, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Fav/CS**
2.	Davis	Cibula	JU	**Favorable**
3.	Looke	Phelps	RC	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 918 limits the circumstances in which an abortion may be lawfully performed on a viable fetus. Under existing law, abortions are generally prohibited during the third trimester. Under the bill, abortions are also prohibited when a fetus reaches viability, which might occur before the third trimester.

The bill also redefines viability. Existing law describes a viable fetus as a fetus who with a reasonable degree of medical probability may survive indefinitely outside the womb. The bill defines a viable fetus as a fetus who is sustainable outside the womb through standard medical procedures. Under the bill, before performing an abortion, a physician must examine the fetus to determine whether it is viable.

Under existing law, an abortion may be performed during the third trimester to "preserve the heath of the pregnant woman." However, existing law does not describe what it means to preserve the health of a pregnant woman. The bill effectively defines this concept as averting a "serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition." The bill applies the new standard to abortions in the third trimester or on a viable fetus. The bill, as under existing law, allows an abortion when a pregnant woman's life is at risk.

II. Present Situation:

Case Law on Abortion

In 1973, the U.S. Supreme Court issued the landmark *Roe v. Wade* decision.[1] Using strict scrutiny, the court determined that a woman's right to terminate a pregnancy is part of a fundamental right to privacy guaranteed under the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution.[2] Further, the court reasoned that state regulation limiting the exercise of this right must be justified by a compelling state interest, and must be narrowly drawn.[3] The court established the trimester framework for the regulation of termination – holding that in the third trimester, a state could prohibit termination to the extent that the woman's life or health was not at risk.[4]

In *Planned Parenthood v. Casey*, the U.S. Supreme Court, while upholding the fundamental holding of *Roe*, recognized that medical advancement could shift determinations of fetal viability away from the trimester framework.[5]

Abortion in Florida

Article I, section 23 of the State Constitution provides an express right to privacy. The Florida Supreme Court has recognized that this constitutional right to privacy "is clearly implicated in a woman's decision whether or not to continue her pregnancy."[6]

In *In re T.W.*, the Florida Supreme Court determined that:

> [p]rior to the end of the first trimester, the abortion decision must be left to the woman and may not be significantly restricted by the state. Following this point, the state may impose significant restrictions only in the least intrusive manner designed to safeguard the health of the mother. Insignificant burdens during either period must substantially further important state interests. . . .
>
> Under our Florida Constitution, the state's interest becomes compelling upon viability. . . . Viability under Florida law occurs at that point in time when the fetus becomes capable of meaningful life outside the womb through standard medical measures.[7]

The Florida Supreme Court recognized that after viability, the state can regulate termination in the interest of the unborn child as long as the mother's health is not in jeopardy.[8]

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[1] 410 U.S. 113 (1973).
[2] *Id.*
[3] *Id.*
[4] *Id.*
[5] 505 U.S. 833 (1992).
[6] *See In re T.W.*, 551 So. 2d 1186, 1192 (Fla. 1989) (holding that a parental consent statute was unconstitutional because it intrudes on a minor's right to privacy).
[7] *Id*., at 1193-94.
[8] *Id.*

Under Florida law, abortion is defined as the termination of a human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.[9] A termination of pregnancy must be performed by a physician[10] licensed under ch. 458, F.S., or ch. 459, F.S., or a physician practicing medicine or osteopathic medicine in the employment of the United States.[11]

A termination of pregnancy may not be performed in the third trimester unless there is a medical necessity. Florida law defines the third trimester to mean the weeks of pregnancy after the 24th week.[12] Specifically, an abortion may not be performed within the third trimester unless two physicians certify in writing that, to a reasonable degree of medical probability, the termination of pregnancy is necessary to save the life or preserve the health of the pregnant woman. If a second physician is not available, one physician may certify in writing to the medical necessity for legitimate emergency medical procedures for termination of the pregnancy.[13]

Section 390.0111(4), F.S., provides that if a termination of pregnancy is performed during viability, the person who performs or induces the termination of pregnancy must use that degree of professional skill, care, and diligence to preserve the life and health of the fetus, which such person would be required to exercise in order to preserve the life and health of any fetus intended to be born and not aborted. Viability is defined in this provision to mean that stage of fetal development when the life of the unborn child may with a reasonable degree of medical probability be continued indefinitely outside the womb. However, the woman's life and health constitute an overriding and superior consideration to the concern for the life and health of the fetus when such concerns are in conflict.

A termination of pregnancy in the third trimester must be performed in a hospital.[14]

Statistical Information on Live Births and Terminations of Pregnancy in Florida

In 2013, The Department of Health reported 214,405 live births in Florida.[15] In that same year, the Agency for Health Care Administration (AHCA) reported 71,503 induced terminations of pregnancy.[16] The information supplied by AHCA provides that

- 65,098 terminations were performed in the first trimester,
- 6,405 were performed in the second trimester, and
- None was performed in the third trimester or after 25 weeks.

[9] Section 390.011(1), F.S.
[10] Section 390.0111(2), F.S.
[11] Section 390.011(8), F.S.
[12] Section 390.011(9), F.S.
[13] Section 390.0111(1), F.S.
[14] Section 797.03(3), F.S.
[15] Florida Department of Health, *Florida Vital Statistics Annual Reports – Births*, on file with the Senate Committee on Judiciary.
[16] Agency for Health Care Administration, *Reported Induced Terminations of Pregnancy (ITOP) by Reason, By Weeks of Gestation, Calendar Year: 2013*, on file with the Senate Committee on Judiciary.

Reasons	Total	12 Weeks or fewer	13 to 24 Weeks	25 Weeks or more
Abortion Performed due to Emotional/Psychological Health of the Mother	85	35	50	0
Abortion Performed due to Incest	2	2	0	0
Abortion Performed due to Physical Health of Mother that is not Life Endangering	92	85	7	0
Abortion Performed due to Rape	240	232	8	0
Abortion Performed due to Serious Fetal Genetic Defect, Deformity, or Abnormality	493	62	431	0
Abortion Performed due to Social or Economic Reasons	5,338	4,967	371	0
Abortion Performed due to a Life Endangering Physical Condition	43	22	21	0
Elective Abortion	65,210	59,693	5,517	0
Florida Totals:	**71,503**	**65,098**	**6,405**	**0**

The statics on this chart were supplied by AHCA. See note 16.

Viability

Current law defines "viability" to mean that stage of fetal development when the life of the unborn child may with a reasonable degree of medical probability be continued indefinitely outside the womb.[17]

The gestational age at which a fetus is viable has occurred earlier in the pregnancy in recent years. The American Academy of Pediatrics, in 1935, chose to define a premature infant as one who weighed less than 2,500 grams at birth and no consideration was given to gestational age. No minimum weight for viability was established, but 1,250 grams was often used and corresponded to an estimated gestational age of 28 weeks. As new medical advances have become increasingly mainstream, the medical definition of viability has continued to evolve as well. With additional medical advancements, infants born at 23 and 24 weeks' estimated gestational age are surviving more frequently[18]

Determining the viability of a fetus is not an exact science and depends on each pregnant woman and fetus. Many factors, including gestational age, weight, sex, and whether it is a single fetus, are considered in determining viability now and in the future as neonatal and medical care advances.[19,20]

[17] Section 390.0111(4), F.S.
[18] Bonnie Hope Arzuaga, MD and Ben Hokew Lee, MD, MPH, MSCR, *See Limits of Human Viability in the United States: A Medicolegal Review*, PEDIATRICS PERSPECTIVES, November 1, 2011, http://pediatrics.aappublications.org/content/128/6/1047.full (Last visited April 6, 2014)
[19] Wolters Kluwer Health, Limit of Viability, UPTODATE, http://www.uptodate.com/contents/limit-of-viability#H8144843, (Last visited April 7, 2014).
[20] The U.S. Department of Health and Human Services, Eunice Kennedy Shriver National Institute of Child Health and Human Development, Pregnancy and Perinatology Branch-supported researchers developed a tool using data from the Neonatal Research Network (NRN) that shows outcome trends for infants born at extremely preterm gestations.

Twenty-one states place limits on abortions after the fetus is viable. Generally, exceptions are made when the life and health of the women is at risk.[21]

Documenting Gestational Age

The Agency for Health Care Administration is responsible for regulating abortion clinics under ch. 390, F.S., and part II of ch. 408, F.S. Section 390.012, F.S., requires the agency to adopt rules[22] for, among other things, clinics that perform abortions after the first trimester of pregnancy. These rules must address physical facilities, supplies and equipment standards, personnel, medical screening and evaluation of patients, abortion procedures, recovery room standards, follow-up care, and adverse incident reporting. The statutes further prescribe specific components to be included within the rules relating to each of these subject areas.

Within rules relating to medical screening and evaluation of patients, the rules must, among other things, require that the physician is responsible for estimating the gestational age of the fetus based on the ultrasound examination and obstetric standards in keeping with established standards of care regarding the estimation of fetal age and shall write the estimate in the patient's medical history. The physician is also required to keep original prints of each ultrasound examination in the patient's medical history file.

III. Effect of Proposed Changes:

The bill prohibits abortions once a physician has determined that, in reasonable medical judgment, a fetus is viable in the same manner as abortions are prohibited during the third trimester of pregnancy. This provides for comparable treatment as medical advances allow the life of a fetus to be sustainable outside the womb at an earlier point of gestation than the third trimester. The bill leaves in place the current prohibition on performing abortions during the third trimester.

Definitions

Section 1

The bill defines the term "reasonable medical judgment" as a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and treatment possibilities with respect to the medical conditions involved.

The term "viable" or "viability" is redefined and moved from another section of law[23] into the definitions section for applicability to the entire ch. 390, F.S. Under the bill, "viable" or "viability" means the stage of fetal development when the life of a fetus is sustainable outside the womb through standard medical measures.

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[21] These states include Arizona, California, Connecticut, Delaware, Georgia, Hawaii, Idaho, Illinois, Kentucky, Maine, Maryland, Michigan, Minnesota, Missouri, Montana, Ohio, Tennessee, Utah, Washington, Wisconsin, and Wyoming. *See* Guttmacher Institute State Policies in Brief, *State Policies on Later Abortions*, April 1, 2014, found at: http://www.guttmacher.org/statecenter/spibs/spib_PLTA.pdf (Last visited April 6, 2014).

[22] These rules are found in Rule 59A-9, F.A.C.

[23] Section 390.0111(4), F.S.

"Standard medical measure" is defined in the bill to mean the medical care that a physician would provide based on the particular facts of the pregnancy, the information available to the physician, and the technology reasonably available in a hospital, as defined in s. 395.002, F.S., with an obstetrical department, to preserve the life and health of the fetus, with or without temporary artificial life sustaining support, if the fetus were born at the same stage of fetal development.

Termination of Pregnancy in the Third Trimester and During Viability

Sections 2 and 3

The bill establishes the same prohibitions and conditions for performing an abortion in the third trimester of pregnancy and once a fetus achieves viability. The medical exceptions that allow a physician to perform an abortion in the third trimester of pregnancy are modified and are consistent with the medical exceptions established during viability.

The bill authorizes a termination of pregnancy in the third trimester or during viability when two physicians certify in writing that, in reasonable medical judgment, the termination is necessary to save the pregnant woman's life or avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition. If a second physician is not available, the physician may certify in writing to the medical necessity for legitimate emergency medical procedures for termination of the pregnancy to save the pregnant woman's life or avert a serious risk of imminent substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition.

The bill specifies a standard of care when a termination of pregnancy occurs during viability that parallels the standard of care required when a termination of pregnancy occurs in the third trimester. The physician performing the abortion must exercise the same degree of professional skill, care, and diligence to preserve the life and health of the fetus which the physician would be required to exercise in order to preserve the life and health of a fetus intended to be born and not aborted. Further, if preserving the life and health of the fetus conflicts with preserving the life and health of the woman, the physician must consider preserving the woman's life and health the overriding and superior concern.

Section 4

This section amends s. 797.03, F.S., to prohibit a person from performing an abortion on a person during viability in a facility other than in a hospital. A person who wilfully violates this provision is guilty of a misdemeanor of the second degree, punishable by a definite term of imprisonment not exceeding 60 days and subject to a fine of up to $500.

Determination of Viability

Section 3

Before terminating a pregnancy, a physician must determine, in reasonable medical judgment, whether the fetus has achieved viability. At a minimum, the physician must perform a medical examination of the pregnant woman and, to the maximum extent possible through reasonably

available tests and the ultrasound,[24] an examination of the fetus. The physician must document in the pregnant woman's medical file his or her determination and the method, equipment, fetal measurements, and any other information used to determine the viability of the fetus.

Penalties

Section 2

The penalties for violating the bill's provisions pertaining to termination of pregnancies during viability in s. 390.01112, F.S., are similar to those for violating the provisions pertaining to termination of pregnancies during the third trimester in s. 390.0111, F.S.

Specifically, the bill provides that a person who willfully performs, or actively participates in, a termination of pregnancy in violation of the requirements of s. 390.01112, F.S., commits a felony of the third degree. If the woman dies as a result of this act, the person commits a felony of the second degree. A felony of the third degree is punishable by a term of imprisonment not exceeding 5 years and may incur a fine of up to $5,000. A felony of the second degree is punishable by a term of imprisonment not exceeding 15 years and may incur a fine of up to $10,000.

Severability and Reversion

Section 5

This section provides for severability and reversion. If any provision of the bill or its application to any person or circumstance is held invalid, then other provisions which can be given effect are to be given effect. Notwithstanding that, if s. 390.01112, F.S., governing the termination of pregnancies during viability, is held unconstitutional and severed, then the amendments in this act to the other provisions of law are repealed and will revert to the law as it existed on January 1, 2014.

The effective date of this act is July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[24] Current law requires an ultrasound to be performed before an abortion may be performed. *See* s. 390.0111(3)(a)1.b., F.S.

D. Other Constitutional Issues:

Roe v. Wade, was decided by the U.S. Supreme Court in 1973.[25] Using strict scrutiny, the court determined that a woman's right to terminate a pregnancy is part of a fundamental right to privacy guaranteed under the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution.[26] Further, the court reasoned that state regulation limiting the exercise of this right must be justified by a compelling state interest, and must be narrowly drawn.[27] The court established the trimester framework for the regulation of termination – holding that in the third trimester, a state could prohibit termination to the extent that the woman's life or health was not at risk.[28]

Later, in 1992, in *Planned Parenthood v. Casey*, the U.S. Supreme Court, while upholding the fundamental holding of *Roe*, recognized that medical advancement could shift determinations of fetal viability away from the trimester framework.[29]

Article I, Section 23 of the State Constitution provides an express right to privacy. The Florida Supreme Court has recognized that an individual's constitutional right to privacy "is clearly implicated in a woman's decision whether or not to continue her pregnancy."[30]

In *In re T.W.*, the Florida Supreme Court determined that:

> [p]rior to the end of the first trimester, the abortion decision must be left to the woman and may not be significantly restricted by the state. Following this point, the state may impose significant restrictions only in the least intrusive manner designed to safeguard the health of the mother. Insignificant burdens during either period must substantially further important state interests. . . . Under our Florida Constitution, the state's interest becomes compelling upon viability. . . . Viability under Florida law occurs at that point in time when the fetus becomes capable of meaningful life outside the womb through standard medical measures.

The Florida Supreme Court recognized that after viability, the state can regulate termination in the interest of the unborn child as long as the mother's health is not in jeopardy.[31]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[25] 410 U.S. 113 (1973).
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] 505 U.S. 833 (1992).
[30] *See In re T.W.*, 551 So. 2d 1186, 1192 (Fla. 1989) (holding that a parental consent statute was unconstitutional because it intrudes on a minor's right to privacy).
[31] *Id.*

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 390.011, 390.0111, and 797.03.

This bill creates section 390.01112 of the Florida Statutes.

This bill creates an unnumbered section of the Florida Statutes.

IX. Additional Information:

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

CS by Health Policy on April 1, 2014:
The CS defines the term "reasonable medical judgment." The CS requires a physician to use reasonable medical judgment, as defined, when determining:

- Whether a fetus is viable, in lieu of "good faith medical judgment"; and,
- Whether a woman's life and health is in sufficient danger to require a termination of pregnancy in either the third trimester or after the fetus is viable, in lieu of a reasonable degree of medical probability.

B. Amendments:

None.

By the Committee on Health Policy; and Senator Flores

588-03595-14 2014918c1

A bill to be entitled

An act relating to the termination of pregnancies; amending s. 390.011, F.S.; defining the terms "reasonable medical judgment" and "standard medical measure" and redefining the term "viability"; amending s. 390.0111, F.S.; revising the circumstances under which a pregnancy in the third trimester may be terminated; providing the standard of medical care for the termination of a pregnancy during the third trimester; providing criminal penalties for a violation of s. 390.01112, F.S.; authorizing administrative discipline for a violation of s. 390.01112, F.S., by certain licensed professionals; creating s. 390.01112, F.S.; prohibiting the termination of a viable fetus; providing exceptions; requiring a physician to perform certain examinations to determine the viability of a fetus; providing the standard of care for the termination of a viable fetus; amending s. 797.03, F.S.; prohibiting an abortion of a viable fetus outside of a hospital; providing for severability; providing for a contingent future repeal and reversion of law; providing an effective date.

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

Section 1. Present subsection (9) of section 390.011, Florida Statutes, is redesignated as subsection (11) and new subsections (9), (10) and (12) are added to that section, to

588-03595-14 2014918c1

read:

390.011 Definitions.—As used in this chapter, the term:

(9) "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and treatment possibilities with respect to the medical conditions involved.

(10) "Standard medical measure" means the medical care that a physician would provide based on the particular facts of the pregnancy, the information available to the physician, and the technology reasonably available in a hospital, as defined in s. 395.002, with an obstetrical department, to preserve the life and health of the fetus, with or without temporary artificial life sustaining support, if the fetus were born at the same stage of fetal development.

(12) "Viable" or "viability" means the stage of fetal development when the life of a fetus is sustainable outside the womb through standard medical measures.

Section 2. Subsections (1), (4), (10), and (13) of section 390.0111, Florida Statutes, are amended to read:

390.0111 Termination of pregnancies.—

(1) TERMINATION IN THIRD TRIMESTER; WHEN ALLOWED.—No termination of pregnancy shall be performed on any human being in the third trimester of pregnancy unless one of the following conditions is met:

(a) Two physicians certify in writing ~~to the fact~~ that, in reasonable medical judgment ~~to a reasonable degree of medical probability~~, the termination of the pregnancy is necessary to save the pregnant woman's life or avert a serious risk of substantial and irreversible physical impairment of a major

bodily function of the pregnant woman other than a psychological condition. ~~or preserve the health of the pregnant woman; or~~

(b) The physician certifies in writing that, in reasonable medical judgment, there is a ~~to the~~ medical necessity for legitimate emergency medical procedures for termination of the pregnancy to save the pregnant woman's life or avert a serious risk of imminent substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition ~~in the third trimester~~, and another physician is not available for consultation.

(4) STANDARD OF MEDICAL CARE TO BE USED IN THIRD TRIMESTER ~~DURING VIABILITY~~.—If a termination of pregnancy is performed in the third trimester, the physician performing ~~during viability, no person who performs or induces~~ the termination of pregnancy must exercise the same ~~shall fail to use that~~ degree of professional skill, care, and diligence to preserve the life and health of the fetus which the physician ~~such person~~ would be required to exercise in order to preserve the life and health of a ~~any~~ fetus intended to be born and not aborted. However, if preserving the life and health of the fetus conflicts with preserving the life and health of the pregnant woman, the physician must consider preserving the woman's life and health the overriding and superior concern ~~"Viability" means that stage of fetal development when the life of the unborn child may with a reasonable degree of medical probability be continued indefinitely outside the womb~~. ~~Notwithstanding the provisions of this subsection, the woman's life and health shall constitute an overriding and superior consideration to the concern for the life and health of the fetus when such concerns are in conflict.~~

(10) PENALTIES FOR VIOLATION.—Except as provided in subsections (3), (7), and (12):

(a) Any person who willfully performs, or actively participates in, a termination of pregnancy ~~procedure~~ in violation of the requirements of this section or s. 390.01112 commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Any person who performs, or actively participates in, a termination of pregnancy ~~procedure~~ in violation of ~~the provisions of~~ this section or s. 390.01112 which results in the death of the woman commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(13) FAILURE TO COMPLY.—Failure to comply with the requirements of this section or s. 390.01112 constitutes grounds for disciplinary action under each respective practice act and under s. 456.072.

Section 3. Section 390.01112, Florida Statutes, is created to read:

390.01112 Termination of pregnancies during viability.—

(1) No termination of pregnancy shall be performed on any human being if the physician determines that, in reasonable medical judgment, the fetus has achieved viability, unless:

(a) Two physicians certify in writing that, in reasonable medical judgment, the termination of the pregnancy is necessary to save the pregnant woman's life or avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition; or

(b) The physician certifies in writing that, in reasonable

medical judgment, there is a medical necessity for legitimate emergency medical procedures for termination of the pregnancy to save the pregnant woman's life or avert a serious risk of imminent substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition, and another physician is not available for consultation.

(2) Before performing a termination of pregnancy, a physician must determine if the fetus is viable by, at a minimum, performing a medical examination of the pregnant woman and, to the maximum extent possible through reasonably available tests and the ultrasound required under s. 390.0111(3), an examination of the fetus. The physician must document in the pregnant woman's medical file the physician's determination and the method, equipment, fetal measurements, and any other information used to determine the viability of the fetus.

(3) If a termination of pregnancy is performed during viability, the physician performing the termination of pregnancy must exercise the same degree of professional skill, care, and diligence to preserve the life and health of the fetus that the physician would be required to exercise in order to preserve the life and health of a fetus intended to be born and not aborted. However, if preserving the life and health of the fetus conflicts with preserving the life and health of the woman, the physician must consider preserving the woman's life and health the overriding and superior concern.

Section 4. Subsection (3) of section 797.03, Florida Statutes, is amended to read:

797.03 Prohibited acts; penalties.—

(3) It is unlawful for any person to perform or assist in performing an abortion on a person during viability or in the third trimester other than in a hospital.

Section 5. Severability and reversion.—

(1) If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

(2) Notwithstanding subsection (1), if s. 390.01112, Florida Statutes, is held unconstitutional and severed by a court having jurisdiction, the amendments made by this act to s. 390.011, Florida Statutes, and subsections (4), (10), and (13) of s. 390.0111, Florida Statutes, will be repealed and will revert to the law as it existed on January 1, 2014.

Section 6. This act shall take effect July 1, 2014.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 1274
INTRODUCER:	Community Affairs Committee; Banking and Insurance Committee; and Senator Hays
SUBJECT:	Citizens Property Insurance Corporation
DATE:	April 17, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	**Fav/CS**
2.	Stearns	Yeatman	CA	**Fav/CS**
3.	Matiyow	Phelps	RC	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1274 postpones the date by one year after which new construction or substantial improvements of structures seaward of the coastal construction control line or within the Coastal Barrier Resources System (CBRS) are ineligible to receive coverage from the Citizens Property Insurance Corporation (Citizens).

The bill declares that certain residential condominiums shall be ineligible for wind-only commercial lines coverage.

II. Present Situation:

Citizens Property Insurance Corporation

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 and the Florida Windstorm Underwriting Association. Citizens operates in accordance with the

[1] "Admitted market" means insurance companies that are licensed to transact insurance business in Florida.
[2] Section 627.351(6)(a)1., F.S.

provisions of s. 627.351(6), F.S., and is governed by a nine-member Board of Governors[3] that administers its Plan of Operations, which is reviewed and approved by the FSC. The Governor appoints a consumer advocate to sit on the board. The Governor, the Chief Financial Officer, the President of the Senate and the Speaker of the House of Representatives each appoint an additional two members. Citizens is subject to regulation by the Office of Insurance Regulation.

Citizens offers property insurance in three separate accounts. Each account is a separate statutory account with separate calculations of surpluses and deficits.[4]

The Personal Lines Account (PLA) offers personal lines residential policies that provide comprehensive, multiperil coverage statewide, except for those areas contained in the Coastal Account. The PLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Personal lines residential coverage consists of the types of coverage provided by homeowner's, mobile home owner's, dwelling, tenant's, and condominium unit owner's policies.

The Commercial Lines Account (CLA) offers commercial lines residential and nonresidential policies that provide basic perils coverage statewide, except for those areas contained in the Coastal Account. The CLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Commercial lines coverage includes commercial residential policies covering condominium associations, homeowners' associations, and apartment buildings. The coverage also includes commercial nonresidential policies covering business properties.

The Coastal Account offers personal residential, commercial residential and commercial non-residential policies in coastal areas of the state. Citizens must offer policies that solely cover the peril of wind (wind only policies) and may offer multiperil policies.[5]

Eligibility for Citizens coverage is at times restricted, or alternatively, the amount of coverage provided by Citizens is limited. Personal lines residential structures are ineligible for Citizens if they have an insured value of $1 million or greater.[6] The eligibility threshold for such policies will be reduced annually in $100,000 increments until it reaches $700,000, effective January 1, 2017. Citizens will insure commercial residential properties at unlimited values. Citizens writes only the first $1 million of commercial non-residential wind-only coverage and the first $2.5 million of commercial non-residential multi-peril policies.

Citizens Rates

Rates for Citizens coverage are required to be actuarially sound,[7] except that Citizens may not implement a rate increase that exceeds 10 percent for any single policy other than sinkhole

[3] Section 627.351(6)(c)4., F.S.
[4] The Personal Lines Account and the Commercial Lines account are combined for credit and Florida Hurricane Catastrophe Fund coverage.
[5] In August of 2007, Citizens began offering personal and commercial residential multiperil policies in this limited eligibility area. Additionally, near the end of 2008, Citizens began offering commercial non-residential multiperil policies in this account.
[6] Section 627.351(6)(a)3.a., F.S.
[7] Section 627.351(6)(n)1., F.S.

coverage,[8] excluding coverage changes and surcharges.[9] The 10 percent limitation on rate increases is referred to as the Citizens rate "glide path" to achieving actuarially sound rates.[10] The implementation of this increase ceases when Citizens has achieved actuarially sound rates. In addition to the overall glide path rate increase, 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 Florida Hurricane Catastrophe Fund coverage, pursuant to s. 215.555(5)(b), F.S.

Eligibility for Insurance in Citizens

Current law requires Citizens to provide a procedure for determining the eligibility of a potential risk for insurance by Citizens and provides specific eligibility requirements based on premium amounts, value of the property insured, and the location of the property. Risks not meeting the statutory eligibility requirements cannot be insured by Citizens. Citizens has additional eligibility requirements set out in their underwriting rules. These rules, which are approved by the OIR, provide flexibility for Citizens to denote some risks as uninsurable based on factors not enumerated in statute, such as age of home, condition and age of roof, vacancy status, certain seasonal occupancy, and type of electrical wiring.

Eligibility Based on Premium Amount

Under current law, an applicant for residential insurance cannot buy insurance in Citizens if an admitted insurer in the private market offers the applicant insurance for a premium that does not exceed the Citizens premium by 15 percent or more.[11] In addition, the coverage offered by the private insurer must be comparable to Citizens' coverage.

Under current law, a residential policyholder cannot renew insurance in Citizens if an insurer in the private market offers to insure the property at a premium equal to or less than the Citizens' renewal premium. The insurance from the private market insurer must be comparable to the insurance from Citizens in order for the renewal premium eligibility requirement to apply.[12]

Eligibility Based on Value of Property Insured

In addition to the eligibility restrictions based on premium amount, current law provides eligibility restrictions for homes and condominium units based on the value of the property insured.[13] Structures with a dwelling replacement cost or a condominium unit that has a dwelling and contents replacement cost of:

- $1 million or more cannot obtain insurance in Citizens starting January 1, 2014. Property insured by Citizens for $1 million or more on December 31, 2013, can remain insured in Citizens until the policy expires in 2014, but cannot be renewed.

[8] Section 627.351(6)(n)6., F.S.
[9] Section 627.351(6)(n), F.S.
[10] With the enactment of Chapter 2007-001, L.O.F., from January 25, 2007, to January 1, 2010, Citizens rates were fixed by statute at the rates that were in effect on December 31, 2006. The Legislature also rescinded a Citizens rate increase that had taken effect January 1, 2007, and resulted in a statewide average rate increase of 12 percent for policies in the personal lines account and 21.4 percent for policies in the high risk account (since renamed the coastal account).
[11] Section 627.351(6)(c)5., F.S.
[12] Section 627.351(6)(c)5., F.S.
[13] Section 627.351(6)(a)3., F.S.

- $900,000 or more cannot obtain insurance in Citizens starting January 1, 2015. Property insured for $900,000 or more on December 31, 2014, can remain insured in Citizens until the policy expires in 2015, but cannot be renewed.
- $800,000 or more cannot obtain insurance in Citizens starting January 1, 2016. Property insured for $800,000 or more on December 31, 2015, can remain insured in Citizens until the policy expires in 2016, but cannot be renewed.
- $700,000 or more cannot obtain insurance in Citizens starting January 1, 2017. Property insured for $700,000 or more on December 31, 2016, can remain insured in Citizens until the policy expires in 2017, but cannot be renewed.

However, Citizens is allowed to insure structures with a dwelling replacement cost or a condominium unit with a dwelling and contents replacement cost of $1 million or less in counties the OIR determines is non-competitive.

Citizens does not have any eligibility restrictions based on the value of the property insured for condominium association, homeowner association, or apartment building policies. Citizens has multiple eligibility and coverage restrictions for commercial businesses, depending on where the business is located and the type of policy the business purchases from Citizens. These restrictions are contained in the underwriting rules of Citizens, not in the statute.

Eligibility Based on Location of Property

Current law also provides an eligibility restriction for insurance in Citizens based on the location of the property. Major structures for which a building permit for new construction or a substantial improvement of the structure is applied for on or after July 1, 2014, and which are located seaward of the coastal construction control line or within the CBRS are ineligible for insurance in Citizens. The definition of "major structure" in s. 161.54, F.S., applies to Citizens' eligibility and is very broad, encompassing all residential and commercial buildings. The definition covers houses, mobile homes, apartment buildings, condominiums, hotels, motels, and restaurants. The definition of "substantial improvement" in s. 161.54, F.S., applies to Citizens' eligibility. Generally, this definition makes any repair, reconstruction, rehabilitation, or improvement to a structure that costs 50 percent or more of the market value of the structure to be a "substantial improvement." The statutory definition contains additional parameters and guidance and exclusions.

Statewide Impact of Citizens' Eligibility Based on Location of Property

Citizens has identified approximately 100,000 parcels of land statewide completely within the CBRS or seaward of the coastal construction control line. Under current law, these parcels are ineligible for insurance in Citizens if:

- The parcel is currently improved (i.e., developed) and the structure located on the parcel is substantially improved with a building permit applied for on or after July 1, 2014.
- If the parcel is currently unimproved (i.e., vacant), but is later developed with a building permit applied for on or after July 1, 2014.

Of the 100,000 total parcels of land completely within the CBRS or seaward of the coastal construction control line, Citizens currently writes 25,000 policies statewide insuring structures on these parcels. Thus, any substantial improvement to these 25,000 properties where a building

permit is applied for on or after July 1, 2014, would keep them from continuing to be insured by Citizens.

Citizens identified another 80,000-100,000 properties it currently insures that could be moved within the CBRS or the control line if the boundaries of these areas change. This would prevent these properties from keeping Citizens insurance if they are substantially improved with a building permit applied for on or after July 1, 2014.

III. Effect of Proposed Changes:

Section 1 postpones a prohibition on coverage by Citizens for certain properties by one year. In 2013, the Florida Legislature required properties located seaward of the coastal construction control line or within the CBRS to be ineligible for coverage from Citizens if a building permit for new construction or substantial improvements was applied for after July 1, 2014. The bill postpones the effectiveness of that prohibition to July 1, 2015.

The bill declares that wind-only coverage for commercial lines residential condominiums is not available for condominiums where 50 percent or more of the units are rented more than eight times in a calendar year for a rental agreement period of less than 30 days, effective July 1, 2014.

Section 2 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Property owners with new construction or making substantial improvements to a structure located in a CBRS will be able to be insured by Citizens until July 1, 2015.

C. Government Sector Impact:

See above.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 627.351 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Community Affairs on April 8, 2014:

- Removes provisions related to:
  - an alternative study for windstorm mitigation;
  - an addendum to the uniform mitigation verification form;
  - referral fees paid by a wind mitigation inspector or received by an insurance agent, broker of company employee.
- Postpones the prohibition on coverage by Citizens for certain structures by one year and makes the postponement apply statewide; and
- Prohibits certain residential condominiums from being eligible for wind-only coverage.

CS by Banking and Insurance on March 25, 2014:

- Requires the OIR to determine non-competitive counties with regards to exempting properties within CBRS from the prohibition of coverage with Citizens.
- Changes the market share formula for Citizens that the OIR is to use when determining that a county is non-competitive.
- Allows Citizens to submit an alternative study to OIR regarding windstorm mitigation. Upon approval by the OIR, Citizens must include mitigation discounts provided by the study in their next rate filing.
- Allows the FSC to make an addendum to the uniform mitigation verification form. The addendum to the form is to be used in counties whose building code has been verified to be more stringent than the highest code recognized by the form.
- Prohibits a certified wind mitigation inspector from paying any referral fees or other forms of compensation to an insurance agent, broker or company employee that recommends an inspector’s services to an insured.

- Prohibits an insurance agent, broker or company employee from accepting any referral fees or other forms of compensation from a certified wind mitigation inspector.

B. Amendments:

None.

By the Committees on Community Affairs; and Banking and Insurance; and Senator Hays

578-04056-14 20141274c2

A bill to be entitled

An act relating to Citizens Property Insurance Corporation; amending s. 627.351, F.S.; providing that a condominium association is ineligible for commercial residential wind-only coverage under certain conditions; providing an effective date.

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

Section 1. Paragraph (a) of subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(a) The public purpose of this subsection is to ensure that there is an orderly market for property insurance for residents and businesses of this state.

1. The Legislature finds that private insurers are unwilling or unable to provide affordable property insurance coverage in this state to the extent sought and needed. The absence of affordable property insurance threatens the public health, safety, and welfare and ~~likewise threatens~~ the economic health of the state. The state therefore has a compelling public interest and a public purpose to assist in assuring that property in the state is insured and that it is insured at affordable rates so as to facilitate the remediation, reconstruction, and replacement of damaged or destroyed property in order to reduce or avoid the negative effects on ~~otherwise resulting to~~ the public health, safety, and welfare, to the economy of the state, and to the revenues of the state and local

578-04056-14 20141274c2

governments which are needed to provide for the public welfare. It is necessary, therefore, to provide affordable property insurance to applicants who are in good faith entitled to procure insurance through the voluntary market but are unable to do so. The Legislature intends, therefore, that affordable property insurance be provided and that it continue to be provided, as long as necessary, through Citizens Property Insurance Corporation, a government entity that is an integral part of the state~~,~~ and ~~that is~~ not a private insurance company. To that end, the corporation shall strive to increase the availability of affordable property insurance in this state, while achieving efficiencies and economies, and while providing service to policyholders, applicants, and agents which is no less than the quality generally provided in the voluntary market, for the achievement of the foregoing public purposes. Because it is essential for this government entity to have the maximum financial resources to pay claims following a catastrophic hurricane, it is further the intent of the Legislature that the corporation continue to be an integral part of the state, ~~and~~ that the income of the corporation be exempt from federal income taxation, and that interest on the debt obligations issued by the corporation be exempt from federal income taxation.

2. The Residential Property and Casualty Joint Underwriting Association originally created by this statute shall be known as the Citizens Property Insurance Corporation. The corporation shall provide insurance for residential and commercial property, for applicants who are entitled, but, in good faith, are unable to procure insurance through the voluntary market. The

corporation shall operate pursuant to a plan of operation approved by order of the Financial Services Commission. The plan is subject to continuous review by the commission. The commission may, by order, withdraw approval of all or part of a plan if the commission determines that conditions have changed since approval was granted and that the purposes of the plan require changes in the plan. For the purposes of this subsection, residential coverage includes both personal lines residential coverage, which consists of the type of coverage provided by homeowner's, mobile home owner's, dwelling, tenant's, condominium unit owner's, and similar policies; and commercial lines residential coverage, which consists of the type of coverage provided by condominium association, apartment building, and similar policies.

3. With respect to coverage for personal lines residential structures:

a. Effective January 1, 2014, a structure that has a dwelling replacement cost of $1 million or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $1 million or more is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2013, may continue to be covered by the corporation until the end of the policy term. The office shall approve the method used by the corporation for valuing the dwelling replacement costs under ~~cost for the purposes of~~ this subparagraph. If a policyholder is insured by the corporation before being determined to be ineligible pursuant to this subparagraph and such policyholder files a lawsuit challenging the determination, the policyholder may remain insured by the

corporation until the conclusion of the litigation.

b. Effective January 1, 2015, a structure that has a dwelling replacement cost of $900,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $900,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2014, may continue to be covered by the corporation only until the end of the policy term.

c. Effective January 1, 2016, a structure that has a dwelling replacement cost of $800,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $800,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2015, may continue to be covered by the corporation until the end of the policy term.

d. Effective January 1, 2017, a structure that has a dwelling replacement cost of $700,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $700,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2016, may continue to be covered by the corporation until the end of the policy term.

The requirements of sub-subparagraphs b.-d. do not apply in counties where the office determines there is not a reasonable degree of competition. In such counties a personal lines residential structure that has a dwelling replacement cost of less than $1 million, or a single condominium unit that has a combined dwelling and contents replacement cost of less than $1

million, is eligible for coverage by the corporation.

4. It is the intent of the Legislature that policyholders, applicants, and agents of the corporation receive service and treatment of the highest possible level but never less than that generally provided in the voluntary market. It is also intended that the corporation be held to service standards no less than those applied to insurers in the voluntary market by the office with respect to responsiveness, timeliness, customer courtesy, and overall dealings with policyholders, applicants, or agents of the corporation.

5.a. Effective January 1, 2009, a personal lines residential structure that is located in the "wind-borne debris region," as defined in s. 1609.2, International Building Code (2006), and that has an insured value on the structure of $750,000 or more is not eligible for coverage by the corporation unless the structure has opening protections as required under the Florida Building Code for a newly constructed residential structure in that area. A residential structure is deemed to comply with this sub-subparagraph ~~subparagraph~~ if it has shutters or opening protections on all openings and if such opening protections complied with the Florida Building Code at the time they were installed.

b. Any major structure as defined in s. 161.54(6)(a) for which a permit is applied on or after July 1, 2015 ~~2014~~, for new construction or substantial improvement as defined in s. 161.54 ~~s. 161.54(12)~~ is not eligible for coverage by the corporation if the structure is seaward of the coastal construction control line established pursuant to s. 161.053 or is within the Coastal Barrier Resources System as designated by 16 U.S.C. ss. 3501-

3510.

6. With respect to wind-only coverage for commercial lines residential condominiums, effective July 1, 2014, a condominium shall be deemed ineligible for coverage if 50 percent or more of the units are rented more than eight times in a calendar year for a rental agreement period of less than 30 days.

Section 2. This act shall take effect July 1, 2014.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 952
INTRODUCER:	Commerce and Tourism Committee and Senator Simpson
SUBJECT:	Workers' Compensation
DATE:	April 17, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Favorable**
2.	Siples	Hrdlicka	CM	**Fav/CS**
3.	Johnson	Phelps	RC	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 952 revises provisions relating to the regulation of workers' compensation retrospective rating plans by the Office of Insurance Regulation (OIR). Currently, under such a plan, the final workers' compensation premium paid by the employer is based on the actual loss experience of the employer during the policy, plus negotiated expenses and charges. If the employer controls the amount of claims, it pays lower premiums. The bill authorizes retrospective rating plans to contain a provision that allows the employer and insurer to negotiate the premium when the employer has multistate exposure, an estimated annual standard premium in Florida of $175,000 or more, and an annual estimated countrywide standard premium of $1 million or more. The bill exempts these retrospective rating plans from s. 627.072(1), F.S., which specifies the factors to be used to determine workers' compensation rates. Retrospective rating plans and associated forms must be filed by a rating organization and approved by the OIR. However, an employer's premium negotiated under a retrospective rating plan is not subject to statutory provisions regarding rates and rating organizations.

The bill may reduce workers' compensation premiums for employers participating in such plans.

The bill has no fiscal impact on the OIR.

II. Present Situation:

Florida law requires every workers' compensation insurer to file its rates and classifications that the insurer proposes to use with the Office of Insurance Regulation (OIR).[1] Section 627.072, F.S., prescribes factors used in the determination of rates.[2] Every insurer must file every manual of classifications, rules, and rates, and every rating plan that it proposes to use with the OIR.[3] Rate filings for workers' compensation are subject to approval by the OIR before they become effective. The standard for approving insurance rates in Florida and most states is that the rate may not be excessive, inadequate, or unfairly discriminatory.[4]

Current Florida law and the rating plans approved by OIR allow for insurers to compete in the market by varying or adjusting premiums, including retrospective (retro) rating plans that adjust the premium at the end of the policy period to reflect the actual loss experience of the employer. In a retro rating plan, the insurer and employer agree that the final premium paid will be based upon losses actually incurred during the policy period. The insurer and employer negotiate on certain expenses, charges, taxes, and assessments, based upon minimum and maximum premiums. Retrospective rating has been a component of workers' compensation rating for over 50 years in Florida and nationwide. The National Council on Compensation Insurance (NCCI) has filed actuarially sound rating plans.[5]

In 1991, the NCCI filed the Large Risk Alternative Rating Option (LRARO) in Florida. The LRARO was described as providing greater flexibility of negotiation between an insurer and employer for risks with over $1,000,000 in standard premium. The Department of Insurance (predecessor of the OIR) disapproved the use of the LRARO on the basis that it did not comply with s. 627.091(1), F.S., and that the LRARO was not a rating plan but an agreement to use any factors acceptable to both parties.[6] Subsequently, in 1993, an insurer filed its own version of the LRARO and the Department of Insurance disapproved it. The rejection of the plan was primarily on the basis that the use of the LRARO would not allow agency oversight as to the determination of premiums since it proposed to allow the insurer and prospective insureds to agree unilaterally on the components to be used in the rating process.[7] The insurer appealed the disapproval to the Division of Administrative Hearings (DOAH) and DOAH found that the Department of Insurance was justified in disapproving the plan.

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[1] Section 627.091(4), F.S., allows an insurer to satisfy this obligation by becoming a member of a licensed rating organization, which makes such filings on its behalf. The law expressly provides that an insurer is not required to be a member of any rating organization, but all workers' compensation insurers in Florida have chosen to do so. Currently, all workers' compensation insurers are members of the National Council on Compensation Insurance.

[2] These factors include such considerations as past and prospective loss experience within and outside the state; conflagration and catastrophe hazards; a reasonable margin for underwriting profit and contingencies; and all other relevant factors, including judgment factors, within and outside the state.

[3] Section 627.091(1), F.S.

[4] Section 627.062, F.S.

[5] OIR, *2014 Agency Legislative Bill Analysis, Senate Bill 952* (Feb. 27, 2014) (on file with the Senate Commerce and Tourism Committee).

[6] *See Liberty Mutual Insurance Company, et. al., v. State of Florida, Department of Insurance,* Case No. 94-0892 (Fla. DOAH 1994).

[7] *Id.*

Currently, the LRARO plans are available in a majority of states. However, Alaska, Arkansas, Florida, and Nebraska do not allow its use.[8] The NCCI retrospective rating plan rule, which does not apply in Florida, provides that an insured is eligible for the LRARO if the estimated standard premium individually, or in any combination with any other commercial casualty lines of insurance, exceeds an annual standard premium eligibility threshold of $500,000 for the term of a retrospective rating plan. The following table provides examples of states with different annual standard premium eligibility thresholds for LRARO.[9]

LRARO Premium Eligibility Threshold by State	
State	**Annual Standard Premium Eligibility Threshold**
Arizona	$250,000
Kansas	$1,000,000
Minnesota	$250,000
Nevada	$250,000
New Hampshire	$250,000
North Carolina	$250,000

III. Effect of Proposed Changes:

Section 1 amends s. 627.072, F.S., to allow an insurer and employer to negotiate the retrospective plan rating factors that can be used for calculating the premium when the employer has multistate exposure, an estimated annual standard premium in Florida of $175,000 or more, and an annual estimated countrywide standard premium of $1 million or more for workers' compensation. These retrospective rating plans are exempt from s. 627.072(1), F.S., which specifies the factors to be used in determining workers' compensation rates. The bill requires such retrospective rating plans and associated forms to be filed by the rating organization (NCCI) and approved by the OIR. However, an employer's negotiated premium is not subject to Part 1 of ch. 627, F.S., also known at the "Rating Law."

Section 2 amends s. 627.281, F.S., to conform a cross reference.

Section 3 provides that the act takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[8] E-mail from Lori Lovgren, NCCI (Mar. 4, 2014) (on file with Senate Committee on Banking and Insurance).
[9] *Id.*

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill would allow insurers and larger employers greater flexibility in negotiating retrospective rating plans by allowing the parties to determine the rating factors used to calculate premiums. This change may result in a reduction in premiums for such employers.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 627.072 and 627.281.

IX. Additional Information:

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

CS by Commerce and Tourism Committee on April 7, 2014:

- Clarifies that an employer eligible to participate in a retrospective rating plan must have an estimated annual standard premium of $175,000 or more in Florida.

- Exempts the provisions within a retrospective rating plan that allow for a negotiated premium from s. 627.072(1), F.S., which specifies factors to be used when determining workers' compensation rates.
- Requires retrospective rating plans and associated forms to be filed by a rating organization and approved by the OIR.
- Provides that an employer's premium negotiated under an approved retrospective rating plan is not subject to Part I of ch. 672, F.S., the "Rating Law."

B. Amendments:

None.

By the Committee on Commerce and Tourism; and Senator Simpson

577-03931-14 2014952c1

A bill to be entitled

An act relating to workers' compensation; amending s. 627.072, F.S.; authorizing employers to negotiate the retrospectively rated premium with insurers under certain conditions; amending s. 627.281, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Present subsections (2) through (4) of section 627.072, Florida Statutes, are renumbered as subsections (3) through (5), respectively, and a new subsection (2) is added to that section, to read:

627.072 Making and use of rates.—

(2) A retrospective rating plan may contain a provision that allows for negotiation of a premium between the employer and the insurer for employers having exposure in more than one state and an estimated annual standard premium in this state of $175,000 or more and an estimated annual countrywide standard premium of $1 million or more for workers' compensation. Provisions within a retrospective rating plan authorizing negotiated premiums are exempt from subsection (1). Such plans and associated forms must be filed by a rating organization and approved by the office. However, a premium negotiated between the employer and the insurer pursuant to an approved retrospective rating plan is not subject to this part.

Section 2. Subsection (2) of section 627.281, Florida Statutes, is amended to read:

577-03931-14 2014952c1

627.281 Appeal from rating organization; workers' compensation and employer's liability insurance filings.—

(2) If such appeal is based upon the failure of the rating organization to make a filing on behalf of such member or subscriber which is based on a system of expense provisions which differs, in accordance with the right granted in s. 627.072(3) ~~s. 627.072(2)~~, from the system of expense provisions included in a filing made by the rating organization, the office shall, if it grants the appeal, order the rating organization to make the requested filing for use by the appellant. In deciding such appeal, the office shall apply the applicable standards set forth in ss. 627.062 and 627.072.

Section 3. This act shall take effect July 1, 2014.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 104
INTRODUCER:	Judiciary Committee and Senator Soto
SUBJECT:	Family Law
DATE:	April 17, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	**Fav/CS**
2.	Hendon	Hendon	CF	**Favorable**
3.	Brown	Phelps	RC	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 104 allows a court to deviate from the minimum amount of support required under child support guidelines based on a court-ordered time-sharing schedule or the time-sharing schedule exercised by the parents. This will allow the court to better recognize the support of the non-custodial parent.

The bill also authorizes courts to take judicial notice in family cases of any court record in Florida or of the United States, when imminent danger is alleged. Although the exigency of the situation waives the requirement to provide a pre-hearing notice to the parties, the court must file a subsequent proper notice within two business days of the hearing. These provisions are limited to family cases in which domestic violence is an issue.

II. Present Situation:

Child Support Guidelines

Child support guidelines are contained in s. 61.30(6), F.S., for the use of the court in determining child support. Guidelines take into account the combined monthly net income of the parents and the number of minor children of parties involved in a child support proceeding. The guidelines establish the minimum amount of support required for a child. These amounts may be increased for additional obligations, such as child care and health insurance costs of the children.[1] The

[1] Sections 61.30(7) and (8), F.S.

court may also depart from the child support guidelines based on factors for deviation identified in law.[2] These are:

- Extraordinary medical, psychological, educational, or dental expenses.
- Independent income of a child or children.
- Documented financial support of a parent.
- Seasonal variation in income.
- The age of the child.
- Special needs of the child.
- Total available assets of the obligee, obligor, and the child.
- The impact of federal tax treatment.
- An application of the child support guidelines schedule that requires a parent to pay another person more than 55 percent of his or her gross income for a current child support obligation.
- The parenting plan, such as where a child spends a significant amount of time, but less than 20 percent of overnight stays with a parent, or the refusal of a parent to participate in a child's activities.
- Any other adjustment needed to further equity for the parties.[3]

The First District Court of Appeal reviewed an administrative support order that provided for a deviation from the child support guidelines.[4] The administrative support order based its decision on one of the statutory factors for deviation from the guidelines. This factor allows deviation where a child spends less than 20 percent of overnight stays with a parent based on a parenting plan. The parents in the case, however, did not have a court-ordered parenting plan. Although Florida law would have required a formal parenting plan as part of a divorce proceeding, the couple never married. Instead, they "decided visitation among themselves."[5] In reversing the administrative order, the court indicated:

> a parenting plan is defined in section 61.046(14) as a court-approved parenting plan with a time-sharing arrangement that can be created through mediation and later approved by a court, or approved by a court where the parties cannot agree. Thus, the plain language of the statute prohibits a trial court from deviating from the guidelines based on a verbal visitation agreement even where equity compels the deviation.[6,7]

A court is also required to adjust the allocation of the burden of a child support award on the parents if a child spends a substantial amount of time with each parent.[8] A child spends a substantial amount of time with a parent if a parent exercises time-sharing at least 20 percent of the overnights of the year.[9]

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[2] Section 61.30(11)(a), F.S.
[3] Section 61.30(11)(a)1. through 11., F.S.
[4] *Dept. of Rev. v. Daly*, 74 So. 3d 165, 166 (Fla. 1st DCA 2011).
[5] *Id.*
[6] *Id*. at 168.
[7] The parent's informal parenting agreement may have been an adequate basis for a court to deviate from the child support guidelines before s. 61.30, F.S., was amended in 2008. In 2008, the Legislature through s. 16, ch. 2008-61, L.O.F., replaced references to "shared parental arrangement" with "parenting plan."
[8] Section 61.30(11)(b), F.S.
[9] Section 61.30(11)(b)8. F.S.

Judicial Notice

Florida's evidence code allows the court to take judicial notice[10]of:

- Acts and resolutions of Congress and the Florida Legislature.
- Decisional, constitutional, and public statutory law of every of other state, territory, and jurisdiction of the U.S.
- Contents of the Federal Register.
- Records of any court of this state or of any court of record of the U.S. or any other U.S. state, territory, or jurisdiction.
- Rules of court of this state, the U.S., or any other U.S. state, territory, or jurisdiction.[11]

Temporary Injunction Hearings

Florida law prohibits the admission of evidence other than verified pleadings or affidavits at ex parte hearings for temporary injunctions.[12] These injunctions relate to underlying allegations of domestic violence; repeat violence, sexual violence, or dating violence; and stalking. Evidence other than verified pleadings or affidavits may be admitted only if the respondent appears at the hearing or has received reasonable notice of the hearing.

III. Effect of Proposed Changes:

Section 1 amends s. 61.30, F.S., to revise the circumstances in which a court may deviate from or approve a request to deviate from the minimum amount of support required under the child support guidelines. A court may deviate from the child support guidelines based on a child's visitation with a parent as provided in a court-ordered time-sharing schedule or the time-sharing schedule exercised by the parents.

Section 2 amends s. 90.204, F.S., to authorize courts to take judicial notice in family cases of any court record in Florida, or of any court in a state, jurisdiction, or territory of the United States, when imminent danger is alleged, which precludes an opportunity to provide advance notice to the parties. If judicial notice is taken, the court must file proper notice of the matters judicially noticed within two business days. These provisions relate to family cases in which domestic violence is an issue. Family law cases include:

> dissolution of marriage, annulment, support unconnected with dissolution of marriage, paternity, child support, Uniform Interstate Family Support Act, custodial care of and access to children, proceedings for temporary or concurrent custody of minor children by extended family, adoption, name change, declaratory judgment actions related to premarital, marital, or postmarital agreements, civil domestic, repeat violence, dating violence, and sexual violence injunctions, juvenile dependency, termination of parental rights, juvenile delinquency, emancipation of a minor,

[10] Judicial notice is defined as "A court's acceptance, for purposes of convenience and without requiring a party's proof, of a well-known and indisputable fact." BLACK'S LAW DICTIONARY (9th ed. 2009).
[11] Section 90.202, F.S.
[12] Sections 741.30(5)(b), 784.046(6)(b), and 784.0485, F.S.

CINS/FINS, truancy, and modification and enforcement of orders entered in these cases.[13]

Sections 3, 4, and 5 amends ss. 741.30, 784.046, and 784.0485, F.S., respectively, to provide a waiver to due process requirements for the admissibility of evidence at ex parte temporary injunction hearings. These hearings relate to temporary injunctions sought for domestic violence, repeat violence, sexual violence or dating violence, and stalking. This bill will allow judicial notice to be taken of records other than verified pleadings or affidavits, without providing a respondent advance notice and an opportunity to be present.

Section 6 of the bill provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of State Courts Administrator anticipates a potential fiscal impact resulting from the bill due to the following:

- Recognition of an informal time-sharing arrangement will impact judicial workload for administrative child support cases that are heard in the circuit court and family law cases in which the parties are pro se litigants. However, the impact is unquantifiable at this time.

[13] Rule 2.545(d)(2.), Rules of Jud. Admin.

- The waiver of due process requirements in temporary injunction cases will affect court workload to the extent that the court is subsequently required to file notice of the matters judicially noticed. However, fiscal impact is indeterminate.[14]

The Department of Children and Families does not expect a fiscal impact.[15]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 61.30, 90.204, 741.30, 784.046, and 784.0485.

IX. Additional Information:

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

CS by Judiciary on April 1, 2014:
The committee substitute makes a technical change which removes legislative intent language.

B. Amendments:

None.

[14] Office of State Courts Administrator, *Judicial Impact Statement, Senate Bill 104* (Nov.18, 2013) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[15] Department of Children and Families, *Senate Bill 104 Fiscal Analysis* (Oct. 17, 2013) (on file with the Senate Committee on Children, Families, and Elder Affairs).

By the Committee on Judiciary; and Senator Soto

590-03523-14 2014104c1

A bill to be entitled

An act relating to family law; amending s. 61.30, F.S.; providing for consideration of time-sharing schedules or time-sharing arrangements as a factor in the adjustment of awards of child support; amending s. 90.204, F.S.; authorizing judges in family cases to take judicial notice of certain court records without prior notice to the parties when imminent danger to persons or property has been alleged and it is impractical to give prior notice; providing for a deferred opportunity to present evidence; requiring a notice of taking such judicial notice to be filed within a specified period; providing that the term "family cases" has the same meaning as provided in the Rules of Judicial Administration; amending ss. 741.30, 784.046, and 784.0485, F.S.; creating an exception to a prohibition against using evidence other than the verified pleading or affidavit in an ex parte hearing for a temporary injunction for protection against domestic violence, repeat violence, sexual violence, dating violence, or stalking; providing an effective date.

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

Section 1. Subsection (11) of section 61.30, Florida Statutes, is amended to read:

61.30 Child support guidelines; retroactive child support.—

(11)(a) The court may adjust the total minimum child support award, or either or both parents' share of the total minimum child support award, based upon the following deviation factors:

1. Extraordinary medical, psychological, educational, or dental expenses.

2. Independent income of the child, not to include moneys received by a child from supplemental security income.

3. The payment of support for a parent which has been regularly paid and for which there is a demonstrated need.

4. Seasonal variations in one or both parents' incomes or expenses.

5. The age of the child, taking into account the greater needs of older children.

6. Special needs, such as costs that may be associated with the disability of a child, that have traditionally been met within the family budget even though fulfilling those needs will cause the support to exceed the presumptive amount established by the guidelines.

7. Total available assets of the obligee, obligor, and the child.

8. The impact of the Internal Revenue Service Child & Dependent Care Tax Credit, Earned Income Tax Credit, and dependency exemption and waiver of that exemption. The court may order a parent to execute a waiver of the Internal Revenue Service dependency exemption if the paying parent is current in support payments.

9. An application of the child support guidelines schedule that requires a person to pay another person more than 55 percent of his or her gross income for a child support

obligation for current support resulting from a single support order.

10. The particular parenting plan, a court-ordered time-sharing schedule, or a time-sharing arrangement exercised by agreement of the parties, such as where the child spends a significant amount of time, but less than 20 percent of the overnights, with one parent, thereby reducing the financial expenditures incurred by the other parent; or the refusal of a parent to become involved in the activities of the child.

11. Any other adjustment that is needed to achieve an equitable result which may include, but not be limited to, a reasonable and necessary existing expense or debt. Such expense or debt may include, but is not limited to, a reasonable and necessary expense or debt that the parties jointly incurred during the marriage.

(b) Whenever a particular parenting plan, a court-ordered time-sharing schedule, or a time-sharing arrangement exercised by agreement of the parties provides that each child spend a substantial amount of time with each parent, the court shall adjust any award of child support, as follows:

1. In accordance with subsections (9) and (10), calculate the amount of support obligation apportioned to each parent without including day care and health insurance costs in the calculation and multiply the amount by 1.5.

2. Calculate the percentage of overnight stays the child spends with each parent.

3. Multiply each parent's support obligation as calculated in subparagraph 1. by the percentage of the other parent's overnight stays with the child as calculated in subparagraph 2.

4. The difference between the amounts calculated in subparagraph 3. shall be the monetary transfer necessary between the parents for the care of the child, subject to an adjustment for day care and health insurance expenses.

5. Pursuant to subsections (7) and (8), calculate the net amounts owed by each parent for the expenses incurred for day care and health insurance coverage for the child.

6. Adjust the support obligation owed by each parent pursuant to subparagraph 4. by crediting or debiting the amount calculated in subparagraph 5. This amount represents the child support which must be exchanged between the parents.

7. The court may deviate from the child support amount calculated pursuant to subparagraph 6. based upon the deviation factors in paragraph (a), as well as the obligee parent's low income and ability to maintain the basic necessities of the home for the child, the likelihood that either parent will actually exercise the time-sharing schedule set forth in the parenting plan, a court-ordered time-sharing schedule, or a time-sharing arrangement exercised by agreement of the parties ~~granted by the court~~, and whether all of the children are exercising the same time-sharing schedule.

8. For purposes of adjusting any award of child support under this paragraph, "substantial amount of time" means that a parent exercises time-sharing at least 20 percent of the overnights of the year.

(c) A parent's failure to regularly exercise the time-sharing schedule set forth in the parenting plan, a court-ordered ~~or agreed~~ time-sharing schedule, or a time-sharing arrangement exercised by agreement of the parties not caused by

the other parent which resulted in the adjustment of the amount of child support pursuant to subparagraph (a)10. or paragraph (b) shall be deemed a substantial change of circumstances for purposes of modifying the child support award. A modification pursuant to this paragraph is retroactive to the date the noncustodial parent first failed to regularly exercise the court-ordered or agreed time-sharing schedule.

Section 2. Subsection (4) is added to section 90.204, Florida Statutes, to read:

90.204 Determination of propriety of judicial notice and nature of matter noticed.—

(4) In family cases, the court may take judicial notice of any matter described in s. 90.202(6) when imminent danger to persons or property has been alleged and it is impractical to give prior notice to the parties of the intent to take judicial notice. Opportunity to present evidence relevant to the propriety of taking judicial notice under subsection (1) may be deferred until after judicial action has been taken. If judicial notice is taken under this subsection, the court shall, within 2 business days, file a notice in the pending case of the matters judicially noticed. For purposes of this subsection, the term "family cases" has the same meaning as provided in the Rules of Judicial Administration.

Section 3. Paragraph (b) of subsection (5) of section 741.30, Florida Statutes, is amended to read:

741.30 Domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement; public records exemption.—

(5)

(b) Except as provided in s. 90.204, in a hearing ex parte for the purpose of obtaining such ex parte temporary injunction, no evidence other than verified pleadings or affidavits shall be used as evidence, unless the respondent appears at the hearing or has received reasonable notice of the hearing. A denial of a petition for an ex parte injunction shall be by written order noting the legal grounds for denial. When the only ground for denial is no appearance of an immediate and present danger of domestic violence, the court shall set a full hearing on the petition for injunction with notice at the earliest possible time. Nothing herein affects a petitioner's right to promptly amend any petition, or otherwise be heard in person on any petition consistent with the Florida Rules of Civil Procedure.

Section 4. Paragraph (b) of subsection (6) of section 784.046, Florida Statutes, is amended to read:

784.046 Action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations; public records exemption.—

(6)

(b) Except as provided in s. 90.204, in a hearing ex parte for the purpose of obtaining such temporary injunction, no evidence other than the verified pleading or affidavit shall be used as evidence, unless the respondent appears at the hearing or has received reasonable notice of the hearing.

Section 5. Paragraph (b) of subsection (5) of section 784.0485, Florida Statutes, is amended to read:

784.0485 Stalking; injunction; powers and duties of court

and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement.—

(5)

(b) Except as provided in s. 90.204, in a hearing ex parte for the purpose of obtaining such ex parte temporary injunction, evidence other than verified pleadings or affidavits may not be used as evidence, unless the respondent appears at the hearing or has received reasonable notice of the hearing. A denial of a petition for an ex parte injunction shall be by written order noting the legal grounds for denial. If the only ground for denial is no appearance of an immediate and present danger of stalking, the court shall set a full hearing on the petition for injunction with notice at the earliest possible time. This paragraph does not affect a petitioner's right to promptly amend any petition, or otherwise be heard in person on any petition consistent with the Florida Rules of Civil Procedure.

Section 6. This act shall take effect July 1, 2014.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 318
INTRODUCER:	Governmental Oversight and Accountability Committee and Senator Stargel
SUBJECT:	Public Meetings/University Direct-support Organization
DATE:	April 17, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Graf	Klebacha	ED	**Favorable**
2.	Kim	McVaney	GO	**Fav/CS**
3.	Graf	Phelps	RC	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 318 exempts portions of meetings of university direct-support organizations (DSO) from public meeting laws when confidential information and documents are discussed.

Specifically, the bill exempts from public meetings requirements a portion of a meeting of a university DSO board of directors, or the board's executive committee or other committees of the board, at which research funding proposals, or plans or programs for research are discussed.

The bill provides for repeal of the public meetings exemption pursuant to the Open Government Sunset Review Act on October 2, 2019, unless reviewed and saved from repeal by the Legislature. Additionally, the bill provides a statement of public necessity justifying the exemption as required by the Florida Constitution.

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

The effective date of the bill is October 1, 2014.

II. Present Situation:

Public records and meetings law

Article I, s. 24(a) of the Florida Constitution sets forth the state law regarding access to public records. Every person has 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 persons acting on their behalf.[1]

Article I, s. 24(b) of the Florida Constitution sets forth the state law regarding access to public meetings. All meetings of any collegial public body of the executive branch of state government or of local governments, school districts, or special districts, at which public business of such body is transacted or discussed must be open and noticed to the public. Meetings of the Legislature must also be open and noticed to the public.[2]

Current law also requires all meetings of any board or commission of any agency or authority of the state or of any county, municipal corporation, or political subdivision at which official acts are to be taken are declared to be public meetings. Such meetings must be open to the public at all times and that no resolution, rule, or formal action is binding except as taken or made at an open meeting. The board or commission is responsible for providing reasonable notice of all such meetings.[3]

However, the Legislature has the authority to exempt records and meetings from the requirements of Article I, s. 24(a) and (b) of the Florida Constitution. The Legislature may provide by general law passed by a two-thirds vote of each house for the exemption of records and meetings. 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.[4]

Pursuant to the Open Government Sunset Review Act, in the fifth year after enactment of a new exemption or substantial amendment of an existing exemption, the exemption must be repealed on October 2 of the fifth year, unless the Legislature acts to reenact the exemption.[5]

University direct-support organizations

A university direct-support organization (DSO) is a Florida not-for-profit corporation which is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a state university.[6] In addition, a university DSO may also be operated for the benefit of a research and development park or research and development authority affiliated with a state university. The DSO must be certified by a state university board of trustees to operate in a manner consistent with the goals of the university and in the best

[1] Art. I, s. 24(a), Fla. Const.
[2] Art. I, s. 24(b), Fla. Const.
[3] Section 286.011(1), F.S.
[4] Art. I, s. 24(c), Fla. Const.
[5] Section 119.15(1)-(3), F.S.
[6] Section 1004.28(1)(a)1.-2., F.S.

interest of the state.[7] DSOs assist the state universities "achieve excellence by providing supplemental resources from private gifts and bequests, and valuable education support services."[8]
State universities are considered agencies of the state. As a result, state universities are subject to public records and public meetings laws.[9] DSO boards are also subject to public records and public meetings laws.[10]

A university DSO must provide for an annual financial audit of the organization's accounts and records which must be conducted by an independent certified public accountant pursuant to rules adopted by the Auditor General in accordance with current law[11] and by the university board of trustees.[12]

Current law provides a public records exemption for the identity of a donor who desires to remain anonymous and for all records of a university DSO *except* any:[13]

- Audit report prepared by the independent auditor during the annual audit process under current law;[14]
- Management letter; or
- Supplemental data requested by the Board of Governors of the State University System of Florida (Florida Board of Governors), the university's board of trustees, the Auditor General, and the Office of Program Policy Analysis and Government Accountability (OPPAGA).

Therefore, all other records are confidential and exempt from public records requirements.

Current law does not provide a comparable public meetings exemption for a portion of a university DSO meeting at which confidential and exempt information is discussed.

III. Effect of Proposed Changes:

CS/SB 318 creates a public meetings exemption for portions of a meeting of the university DSO board of directors, or the board's executive committee or other committees of the board, at which a proposal seeking research funding from the DSO, or a plan or program for either initiating or supporting research is discussed.

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[7] Section 1004.28(1)(a)2.-3., F.S.
[8] Board of Governors of the State University System of Florida, *State University System of Florida Consolidated Financial Statements* (Fiscal Year June, 30, 2010), at 10, *available at* http://flbog.edu/about/budget/docs/2012-SUS-Consolidated-Financial-Statement-Manual.pdf.
[9] Chapters 119 and 286, F.S. *See Wood v. Marston*, 442 So. 2d 934, 938 (Fla. 1983) (holding that a University of Florida screening committee was subject to Florida's Sunshine Law).
[10] Section 1004.28, F.S.; *see also Palm Beach Community College Foundation, INC., v. WFTV, INC.*, 611 So.2nd 588 (4th DCA 1993); Op. Att'y Gen. Fla. 05-27 (2005); Op. Att'y Gen. Fla. 92-53 (1992) (providing that John and Mable Ringling Museum of Art Foundation, Inc., established pursuant to statute as a not-for-profit corporation to assist the museum in carrying out its functions by raising funds for the museum, is subject to Sunshine Law by virtue of its substantial ties with the museum).
[11] Section 11.45(8), F.S.
[12] Section 1004.28(5), F.S.
[13] Section 1004.28(5), F.S.
[14] Section 1004.28(5), F.S.

The bill provides a statement of public necessity, as required by the Florida Constitution, and establishes October 2, 2019 as the date for repeal of the public meetings exemption, unless the exemption is reviewed and reenacted by the Legislature, pursuant to the Open Government Sunset Review Act.

The bill's effective date is October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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 public records or public meetings exemption. This bill creates a new public meetings exemption; therefore, it requires a two-thirds vote for passage.

Public Necessity Statement

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

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Florida Board of Governors reported that if a state university receives funding for a research project or program from both state and private sources, it may be challenging to determine if the exemption from public meetings will apply.[15]

VIII. Statutes Affected:

This bill substantially amends section 1004.28 of the Florida Statutes.

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on March 13, 2014:
The CS removes a provision exempting portions of meetings when the identity of a donor or a prospective donor is discussed.

B. Amendments:

None.

[15] Board of Governors of the State University System of Florida, *2014 Agency Bill Analysis for SB 318* (Nov. 20, 2013), at 2.

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

585-02540-14 2014318c1

A bill to be entitled

An act relating to public meetings; amending s. 1004.28, F.S.; providing an exemption from public meeting requirements for any portion of a meeting of the board of directors of a university direct-support organization, or of the executive committee or other committees of such board, at which any proposal seeking research funding from the organization or a plan or program for either initiating or supporting research is discussed; providing for 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. Subsection (5) of section 1004.28, Florida Statutes, is amended to read:

1004.28 Direct-support organizations; use of property; board of directors; activities; audit; facilities.—

(5) ANNUAL AUDIT; PUBLIC RECORDS EXEMPTION; PUBLIC MEETINGS EXEMPTION.—

(a) Each direct-support organization shall provide for an annual financial audit of its accounts and records to be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General pursuant to s. 11.45(8) and by the university board of trustees. The annual audit report shall be submitted, within 9 months after the end of the fiscal year, to the Auditor General and the Board of Governors for review. The Board of Governors, the university board of trustees, the Auditor General, and the Office of Program Policy Analysis and Government Accountability shall have the authority to require and receive from the organization or from its independent auditor any records relative to the operation of the organization. The identity of donors who desire to remain anonymous shall be protected, and that anonymity shall be maintained in the auditor's report.

(b) All records of the organization other than the auditor's report, management letter, and any supplemental data requested by the Board of Governors, the university board of trustees, the Auditor General, and the Office of Program Policy Analysis and Government Accountability shall be confidential and exempt from ~~the provisions of~~ s. 119.07(1).

(c) Any portion of a meeting of the board of directors of the organization, or of the executive committee or other committees of such board, at which any proposal seeking research funding from the organization or a plan or program for either initiating or supporting research is discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that any portion of a meeting of the board of directors of a direct-support organization established under s. 1004.28, Florida Statutes, or of the executive committee or other committees of such board, at which any proposal seeking research funding from the organization or a plan or program for

either initiating or supporting research is discussed should be held exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution. The resources raised by direct-support organizations are frequently used to initiate, develop, and fund plans and programs for research that routinely contain sensitive proprietary information, including university-connected research projects, which provide valuable opportunities for faculty and students and may lead to future commercial applications. This activity requires the direct-support organization to develop research strategies and evaluate proposals for research grants that routinely contain sensitive or proprietary information, including specific research approaches and targets of investigation, the disclosure of which could injure those conducting the research. Maintaining the confidentiality of research strategies, plans, and proposals is a hallmark of a responsible funding process, is practiced by the National Science Foundation and the National Institutes of Health, and allows for candid exchanges among reviewers. The state has recognized these realities by expressly making most of the records of direct-support organizations confidential and exempt from the state's public records requirements, including proposals seeking research funding. Failure to close meetings in which these activities are discussed would significantly undermine the confidentiality of the strategies, plans, and proposals themselves. Without the exemption from public meeting requirements, the release during a public meeting of a proposal seeking research funding from the direct-support organization or a plan or program for either initiating or supporting research would defeat the purpose of the public records exemption. It is

therefore the finding of the Legislature that the exemption from public meeting requirements is a public necessity.

Section 3. This act shall take effect October 1, 2014.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 1008
INTRODUCER:	Appropriations Committee and Senator Stargel
SUBJECT:	Article V Constitutional Conventions
DATE:	April 17, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	**Favorable**
2.	Shettle	Kynoch	AP	**Fav/CS**
3.	Davis	Phelps	RC	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1008 creates the "Article V Constitutional Convention Act" and establishes a framework for selecting and authorizing delegates to attend an Article V convention for the purpose of proposing amendments to the United States Constitution.

The bill provides that:

- Delegates and alternate delegates will be appointed by the Senate and House of Representatives pursuant to joint rules adopted by both chambers;
- Delegates must execute a written oath stating that the delegate will support the U.S. Constitution and the State Constitution and abide by any instructions adopted by the Legislature;
- The Legislature must adopt a concurrent resolution once delegates are appointed and provide instructions to the delegates regarding the rules of procedure and relevant matters relating to the Article V convention;
- A delegate who votes outside the scope of the instructions established by a concurrent resolution is subject to criminal penalties, forfeits his or her appointment, and the vote is void; and
- An advisory group shall be appointed to advise the delegates on whether certain actions would violate the instructions established by a concurrent resolution.

The bill is not expected to have a significant fiscal impact.

II. Present Situation:

Methods of Amending the U.S. Constitution

Article V of the United States Constitution provides two methods for proposing amendments to the Constitution. The first method authorizes Congress to propose amendments to the states which are approved by a two-thirds vote of both Houses of Congress.[1] Amendments approved in this manner do not require the President's signature and are transmitted to each state for ratification.[2] Starting with the Bill of Rights in 1789, Congress used this method to submit 33 amendments to the states. Of those 33 proposals, 27 amendments to the Constitution were approved by the states.[3]

The second method, which has never been used, requires Congress to call a convention for proposing amendments when two-thirds of the state legislatures apply to Congress to call an Article V convention.[4] Currently, 34 states would need to make applications to meet the two-thirds requirement to call an Article V Convention. Because an Article V convention has never been conducted, what might actually occur procedurally or substantively is unclear.[5]

With the recent passage of a Michigan balanced budget memorial,[6] it has been suggested that the requisite 34 states have now made application to Congress for an Article V convention. Because some states have passed and rescinded their applications, the final count is unclear and will likely involve legal analysis by Congress as to how to best proceed.

If an Article V convention is called by Congress, nothing in Florida law or federal law provides guidance as to how delegates will be selected or what the scope of their authority will be. Also unclear is how delegates to a convention will be apportioned. One approach could be a model similar to the Electoral College which is based on population. Another could be based on the Senate model of two people per state. Accordingly, how many delegates Florida would have is also unknown.

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[1] U.S. CONST. Article V.
[2] U.S. National Archives and Records Administration, *The Constitutional Amendment Process*, http://www.archives.gov/federal-register/constitution (last visited February 4, 2014).
[3] Thomas H. Neale, Congressional Research Service, *The Article V Convention: Contemporary Issues for Congress* (July 9, 2012), http://www.fas.org/sgp/crs/misc/R42589.pdf .
[4] U.S. CONST. Article V.
[5] Article V further provides that the amendments shall become a part of the Constitution when ratified by the Legislatures of three-fourths of the states or by conventions in three-fourths of the states. This would require ratification by 38 states. Because Article V provides that the amendments become valid when ratified by three-fourths of the legislatures or conventions "as the one or the other Mode of Ratification may be proposed by the Congress," Congress may choose the method of ratification. With the exception of the 21st Amendment, which repealed the 18th Amendment and prohibition, Congress has sent all proposed amendments to the legislatures for ratification.
[6] Stephan Dinan, *Constitutional conundrum: Michigan demand for a balanced budget could trigger amendment convention*, THE WASHINGTON TIMES, March 31, 2014, http://www.washingtontimes.com/news/2014/mar/31/constitutional-conundrum-michigan-demand-for-a-bal/; Barnini Chakraborty, *Did Michigan just trigger 'constitutional convention'? Bid gains steam*, FOX NEWS, April 2, 2014, http://www.foxnews.com/politics/2014/04/02/rare-option-forcing-congress-to-meet-change-constitution-gains-momentum/

III. Effect of Proposed Changes:

Purpose

This bill creates the "Article V Constitutional Convention Act" and establishes a framework for selecting and authorizing delegates to attend an Article V convention to propose amendments to the United States Constitution. The legislation is similar to a format adopted by Indiana for the same purpose.

Appointment of Delegates

Under the bill, the Senate and House of Representatives will appoint an equal number of delegates and alternate delegates by concurrent resolution pursuant to joint rules adopted by each chamber. The bill presumes that Florida will have two delegates, but authority is provided to appoint the number of delegates that the state is allocated.

If the Legislature is not in session at the time that delegates must be appointed, the President of the Senate and the Speaker of the House of Representatives must call the Legislature into special session for the purpose of appointing the delegates.

To be appointed as a delegate or alternate delegate a person must receive, in each chamber, a vote of a majority of all the members elected to that chamber. At the time of appointment each alternate delegate will be paired with a delegate. An alternate delegate must act in the place of the paired delegate if the delegate is absent from the Article V convention or vacates the office.

The Legislature may recall a delegate or alternate delegate and replace that person at any time. If the Legislature is not in session when a vacancy needs to be filled, the President of the Senate and Speaker of the House of Representatives shall call a special session for that purpose.

Qualifications of Delegates and Alternate Delegates

A delegate or alternate delegate must:
- Reside in the state;
- Be a registered voter in the state; and
- Not be registered or required to be registered as a lobbyist under state law.

A person may not be a delegate if he or she holds a federal office.

Reimbursement of Expenses

Delegates serve without compensation but may be reimbursed, at the expense of the Senate and House of Representatives, for their per diem and travel expenses pursuant to s. 112.061, F.S.

Oath of Office

Each delegate and alternate delegate is required to execute an oath in the state, and in writing before exercising any function of that position. The oath provides that he or she will:

- Support the United States Constitution and the State Constitution:
- Faithfully abide by and execute any instructions adopted by the Legislature; and
- Otherwise faithfully discharge the duties of a delegate or alternate delegate.

The executed oath must be filed with the Secretary of State. After the oath is filed, the Governor will issue a commission to the delegate or alternate delegate.

Instructions

After delegates and alternate delegates are appointed, the Legislature must adopt a concurrent resolution to provide instructions to the delegates and alternate delegates to provide instructions on the rules of procedure and any other matter relating to the Article V convention that the Legislature deems necessary. Those instructions may be amended by the Legislature at any time by a concurrent resolution.

Votes Cast Outside the Scope of Instructions or Limits

A vote cast by a delegate or alternate delegate at an Article V convention is void if the vote is:
- Outside the scope of the instructions established by the Legislature's concurrent resolution; or
- Outside the limits placed by the Legislature in its application calling for the Article V convention.

Status of Appointment

If a delegate or alternate delegate votes or attempts to vote outside the Legislature's instructions or the limits of the Legislature's application for a convention, the delegate or alternate forfeits his or her appointment. If the delegate forfeits an appointment for these reasons, the paired alternate delegate assumes the role of the delegate at the time that the forfeiture occurs.

Status of Application

If all of the delegates and alternate delegates vote or attempt to vote outside the scope of the Legislature's instructions or outside the limits placed by the Legislature in its application for the constitutional convention, then the Legislature's application for the constitutional convention ceases to be a continuing application and is to be treated as having no effect.

Criminal Liability

If a delegate or alternate delegate knowingly or intentionally votes or attempts to vote outside the scope of the instructions or limits as discussed above, he or she commits a third degree felony, which is punishable by a term of imprisonment that does not exceed 5 years[7] and a fine that does not exceed $5,000.[8]

[7] Section 775.082, F.S.
[8] Section 775.083, F.S.

Advisory Group

Membership and Policies

The bill establishes an Article V convention advisory group. The advisory group consists of an attorney appointed by the President of the Senate, an attorney appointed by the Speaker of the House of Representatives, and an attorney selected by agreement of the appointed attorneys, who will serve as chair of the advisory group. The group will meet at the call of the chair and establish policies and procedures that the group deems necessary to carry out the provisions of this bill.

Responsibilities

The advisory group is responsible to advise a delegate or alternate delegate, when asked by the delegate or alternate delegate, whether an action or attempt to take an action would:

- Violate the instructions established by the Legislature; or
- Exceed the limits placed by the Legislature in the application for an Article V convention on the subjects and amendments that may be considered by the convention.

The advisory group must render an advisory determination within 24 hours after receiving a request and must transmit a copy of its determination to the requester as expeditiously as possible.

Upon the request of the President of the Senate, the Speaker of the House, the Attorney General, or on its own motion, the advisory group shall advise the Attorney General whether there is reason to believe that a vote or attempt to vote has violated the instructions of the Legislature or the limits placed in the application for an Article V convention. The opinion may be issued without notice or an evidentiary proceeding, or after a hearing conducted by the advisory group. The advisory determination must be rendered within 24 hours after the request and a copy of the opinion must be transmitted to the Attorney General as expeditiously as possible.

Revocation of Credentials

When the Attorney General receives an advisory determination stating that a vote or attempt to vote is a violation of the Legislature's instructions or exceeds the limits placed by the Legislature in the Article V convention application, he or she must inform the delegates, alternate delegates, President of the Senate, Speaker of the House, and the Article V convention that:

- The vote or attempt to vote did not comply with Florida law and is void and has no effect; and
- The credentials of the delegate or alternate delegate who is the subject of the determination are revoked.

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/SB 1008 is not expected to have a significant fiscal impact. Delegates or alternate delegates will serve without compensation but may be reimbursed for per diem and travel expenses.

VI. Technical Deficiencies:

Section 4 of the bill describes the qualifications of delegates and alternate delegates. Beginning on line 80, the bill states that "A person may not be appointed as a delegate if he or she holds a federal office." The other qualifications in this section apply to both delegates and alternate delegates.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 11.93, 11.931, 11.932, 11.933, 11.9331, 11.9332, 11.9333, 11.9334, 11.9335, 11.9336, 11.9337, 11.934, 11.9341, 11.9342, 11.9343, 11.9344, 11.9345, 11.935, 11.9351, and 11.9352.

IX. Additional Information:

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

CS by Appropriations on April 10, 2014:
The committee substitute:

- Provides that the President of the Senate and the Speaker of the House of Representatives, rather than the Governor, shall call the Legislature into special session for the purpose of appointing delegates and alternate delegates.
- Requires that the oath executed by a delegate or alternate delegate is executed in the state.
- Provides that the advisory group will consist of an attorney appointed by the President of the Senate, an attorney appointed by the Speaker of the House of Representatives, and an attorney selected by agreement of the appointed attorneys, who will serve as chair of the advisory group.

B. Amendments:

None.

By the Committee on Appropriations; and Senator Stargel

576-04220-14 20141008c1

A bill to be entitled

An act relating to Article V constitutional conventions; creating s. 11.93, F.S.; providing a short title; creating s. 11.931, F.S.; providing for applicability; creating s. 11.932, F.S.; providing definitions; creating s. 11.933, F.S.; establishing qualifications of delegates and alternate delegates to an Article V constitutional convention; creating s. 11.9331, F.S.; providing for the appointment of delegates by the Legislature; creating s. 11.9332, F.S.; requiring majority vote approval in each chamber for the appointment of delegates; creating s. 11.9333, F.S.; authorizing the Legislature to recall a delegate and fill a vacancy; authorizing the presiding officers of the Legislature to call for a special legislative session to fill a vacancy; creating s. 11.9334, F.S.; establishing a legislative method for appointments and recalls; creating s. 11.9335, F.S.; providing for the reimbursement of delegates and alternate delegates for per diem and travel expenses; creating s. 11.9336, F.S.; requiring delegates and alternate delegates to execute a written oath of responsibilities; creating s. 11.9337, F.S.; providing for the filing of delegates' oaths and the issuance of commissions; creating s. 11.934, F.S.; providing for instructions to delegates and alternate delegates; creating s. 11.9341, F.S.; establishing duties of alternate delegates; creating s. 11.9342, F.S.; establishing circumstances under which a convention vote is

576-04220-14 20141008c1

declared void; creating s. 11.9343, F.S.; providing circumstances under which a delegate or alternate delegate's appointment is forfeited; creating s. 11.9344, F.S.; establishing circumstances under which the application to call an Article V convention ceases to be a continuing application and is deemed to have no effect; creating s. 11.9345, F.S.; providing penalties for a delegate or alternate delegate who votes or attempts to vote outside the scope of the Legislature's instructions or the limits of the call for a constitutional convention; creating ss. 11.935, 11.9351, and 11.9352, F.S.; establishing a delegate advisory group, its membership, duties, and responsibilities; providing an effective date.

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

Section 1. Section 11.93, Florida Statutes, is created to read:

11.93 Short title.—Sections 11.93-11.9352 may be cited as the "Article V Constitutional Convention Act."

Section 2. Section 11.931, Florida Statutes, is created to read:

11.931 Applicability.—Sections 11.93-11.9352 shall apply when an Article V convention is called for the purpose of proposing amendments to the Constitution of the United States.

Section 3. Section 11.932, Florida Statutes, is created to read:

11.932 Definitions.—As used in ss. 11.93-11.9352, the term:

(1) "Alternate delegate" means an individual who is appointed as an alternate delegate as provided by law.

(2) "Article V convention" means a convention called for by the states under Article V of the Constitution of the United States for the purpose of proposing amendments to the Constitution of the United States.

(3) "Chamber" means either the Senate or the House of Representatives.

(4) "Delegate" means an individual appointed to represent Florida at an Article V convention.

(5) "Paired delegate" means the delegate with whom an alternate delegate is paired.

Section 4. Section 11.933, Florida Statutes, is created to read:

11.933 Qualifications of delegates and alternate delegates.—

(1) To be appointed as a delegate or alternate delegate to an Article V convention, a person must:

(a) Reside in this state.

(b) Be a registered voter in this state.

(c) Not be registered or required to be registered as a lobbyist under the laws of this state.

(2) A person may not be appointed as a delegate if he or she holds a federal office.

Section 5. Section 11.9331, Florida Statutes, is created to read:

11.9331 Appointment of delegates by Legislature.—

(1) Whenever an Article V convention is called, the Senate and House of Representatives shall appoint, under rules adopted

jointly by the Senate and House of Representatives:

(a) The number of delegates allocated to represent Florida.

(b) An equal number of alternate delegates.

(2) Unless otherwise established by the rules of procedure of an Article V convention, it is presumed that Florida has two delegates and two alternate delegates designated to represent the state.

(3) If the Legislature is not in session when delegates must be appointed, the President of the Senate and the Speaker of the House of Representatives shall call the Legislature into special session pursuant to s. 11.011 for the purpose of appointing delegates and alternate delegates.

Section 6. Section 11.9332, Florida Statutes, is created to read:

11.9332 Appointment by majority vote of each chamber; pairing delegates and alternate delegates.—

(1) To be appointed as a delegate or an alternate delegate, a person must receive, in each chamber, the vote of a majority of all the members elected to that chamber.

(2) At the time of appointment, each alternate delegate must be paired with a delegate as provided by a concurrent resolution adopted by the Legislature.

Section 7. Section 11.9333, Florida Statutes, is created to read:

11.9333 Recall; filling a vacancy; special legislative session.—

(1) The Legislature may, at any time, recall a delegate or alternate delegate and replace that delegate or alternate delegate with an individual appointed under s. 11.9331.

(2) The Legislature may, at any time, fill a vacancy in the office of delegate or alternate delegate with a person appointed under s. 11.9331. If the Legislature is not in session when a vacancy occurs with respect to both a delegate and the paired alternate delegate, the President of the Senate and the Speaker of the House of Representatives shall call the Legislature into special session pursuant to s. 11.011 for the purpose of appointing a delegate and an alternate delegate to fill the vacancies.

Section 8. Section 11.9334, Florida Statutes, is created to read:

11.9334 Method of appointment and recall.—The Legislature shall appoint or recall delegates or alternate delegates by concurrent resolution.

Section 9. Section 11.9335, Florida Statutes, is created to read:

11.9335 Reimbursement of per diem and travel expenses.—A delegate or alternate delegate shall serve without compensation but may be reimbursed for per diem and travel expenses pursuant to s. 112.061.

Section 10. Section 11.9336, Florida Statutes, is created to read:

11.9336 Oath.—Each delegate and alternate delegate shall, before exercising any function of the position, execute an oath in the state and in writing that the delegate or alternative delegate will:

(1) Support the Constitution of the United States and the State Constitution.

(2) Faithfully abide by and execute any instructions to

delegates and alternate delegates adopted by the Legislature.

(3) Otherwise faithfully discharge the duties of a delegate or alternate delegate.

Section 11. Section 11.9337, Florida Statutes, is created to read:

11.9337 Filing of oath; issuance of commission.—The executed oath of a delegate or alternate delegate shall be filed with the Secretary of State. After the oath is filed, the Governor shall issue a commission to the delegate or alternate delegate.

Section 12. Section 11.934, Florida Statutes, is created to read:

11.934 Instructions to delegates.—

(1) When delegates and alternate delegates are appointed, the Legislature shall adopt a concurrent resolution to provide instructions to the delegates and alternate delegates regarding the rules of procedure and any other matter relating to the Article V convention that the Legislature considers necessary.

(2) The Legislature may amend the instructions at any time by concurrent resolution.

Section 13. Section 11.9341, Florida Statutes, is created to read:

11.9341 Duties of alternate delegates.—An alternate delegate:

(1) Shall act in the place of the paired delegate when the paired delegate is absent from the Article V convention.

(2) Replaces the paired delegate if the alternate delegate's paired delegate vacates the office.

Section 14. Section 11.9342, Florida Statutes, is created

to read:

11.9342 Vote cast outside the scope of instructions or limits; status of vote.—A vote cast by a delegate or an alternate delegate at an Article V convention is void if the vote is outside the scope of:

(1) The instructions established by a concurrent resolution adopted pursuant to s. 11.934; or

(2) The limits placed by the Legislature in a concurrent resolution or memorial that calls for an Article V convention for the purpose of proposing one or more amendments to the Constitution of the United States on the subjects and amendments that may be considered by the Article V convention.

Section 15. Section 11.9343, Florida Statutes, is created to read:

11.9343 Vote cast outside the scope of instructions or limits; appointment forfeited.—

(1) A delegate or alternate delegate forfeits his or her appointment by virtue of a vote or attempt to vote that is outside the scope of:

(a) The instructions established by a concurrent resolution adopted pursuant to s. 11.934; or

(b) The limits placed by the Legislature in a concurrent resolution or memorial that calls for an Article V convention for the purpose of proposing one or more amendments to the Constitution of the United States on the subjects and amendments that may be considered by the Article V convention.

(2) If a delegate forfeits an appointment under subsection (1), the paired alternate delegate of the delegate becomes the delegate at the time the forfeiture of the appointment occurs.

Section 16. Section 11.9344, Florida Statutes, is created to read:

11.9344 Vote cast outside the scope of instructions or limits; status of application.—The application of the Legislature to call an Article V convention for proposing amendments to the Constitution of the United States ceases to be a continuing application and shall be treated as having no effect if all of the delegates and alternate delegates vote or attempt to vote outside the scope of:

(1) The instructions established by a concurrent resolution adopted pursuant to s. 11.934; or

(2) The limits placed by the Legislature in a concurrent resolution or memorial that calls for an Article V convention for the purpose of proposing one or more amendments to the Constitution of the United States on the subjects and amendments that may be considered by the Article V convention.

Section 17. Section 11.9345, Florida Statutes, is created to read:

11.9345 Vote cast outside the scope of instructions; criminal liability.—A delegate or alternate delegate commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083, who signs an oath of office as required by s. 11.9336 in the state and who thereafter violates the oath by knowingly or intentionally voting or attempting to vote outside the scope of:

(1) The instructions established by a concurrent resolution adopted pursuant to s. 11.934; or

(2) The limits placed by the Legislature in a concurrent resolution or memorial that calls for an Article V convention

for the purpose of proposing one or more amendments to the Constitution of the United States on the subjects and amendments that may be considered by the Article V convention.

Section 18. Section 11.935, Florida Statutes, is created to read:

11.935 Article V convention advisory group.—

(1) As used in this section, the term "advisory group" means the Article V convention delegate advisory group.

(2) The advisory group consists of the following members:

(a) An attorney appointed by the President of the Senate.

(b) An attorney appointed by the Speaker of the House of Representatives.

(c) An attorney selected by agreement of the attorneys appointed under paragraphs (a) and (b), who shall serve as chair of the advisory group.

(3) The advisory group shall meet at the call of the chair and shall establish the policies and procedures that the advisory group determines necessary to carry out ss. 11.93-11.9352.

(4) Upon the request of a delegate or alternate delegate, the advisory group shall advise the delegate or alternate delegate whether there is reason to believe that an action or an attempt to take an action by a delegate or alternate delegate would:

(a) Violate the instructions established by a concurrent resolution adopted by the Legislature under s. 11.934; or

(b) Exceed the limits placed by the Legislature in a concurrent resolution or memorial that calls for an Article V convention for the purpose of proposing one or more amendments

to the Constitution of the United States on the subjects and amendments that may be considered by the Article V convention.

(5) The advisory group:

(a) May render an advisory determination under this section in any summary manner considered appropriate by the advisory group.

(b) Shall render an advisory determination under this section within 24 hours after receiving a request for a determination.

(c) Shall transmit a copy of an advisory determination under this section in the most expeditious manner possible to the delegate or alternate delegate who requested the advisory determination.

(d) If the advisory group renders an advisory determination under this section, the advisory group may also take an action permitted under s. 11.9351.

Section 19. Section 11.9351, Florida Statutes, is created to read:

11.9351 Oversight of delegates with respect to instructions.—

(1) The advisory group, on its own motion, or upon the request of the President of the Senate, the Speaker of the House of Representatives, or the Attorney General, shall advise the Attorney General whether there is reason to believe that a vote or an attempt to vote by a delegate or alternate delegate has:

(a) Violated the instructions established by a concurrent resolution adopted by the Legislature under s. 11.934; or

(b) Exceeded the limits placed by the Legislature in a concurrent resolution or memorial that calls for an Article V

convention for the purpose of proposing one or more amendments to the Constitution of the United States on the subjects and amendments that may be considered by the Article V convention.

(2) The advisory group shall issue the advisory determination under this section by one of the following summary procedures:

(a) Without notice or an evidentiary proceeding; or

(b) After a hearing conducted by the advisory group.

(3) The advisory group shall render an advisory determination under this section within 24 hours after receiving a request for an advisory determination.

(4) The advisory group shall transmit a copy of an advisory determination in the most expeditious manner possible to the Attorney General.

Section 20. Section 11.9352, Florida Statutes, is created to read:

11.9352 Advisory determination concerning a vote outside the scope of instructions.—Immediately, upon receipt of an advisory determination that finds that a vote or attempt to vote by a delegate or alternate delegate is a violation as described in s. 11.9351 or in excess of the authority of the delegate or alternate delegate, the Attorney General shall inform the delegates, alternate delegates, the President of the Senate, the Speaker of the House of Representatives, and the Article V convention that:

(1) The vote or attempt to vote did not comply with Florida law, is void, and has no effect.

(2) The credentials of the delegate or alternate delegate who is the subject of the determination are revoked.

Section 21. This act shall take effect July 1, 2014.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 1714
INTRODUCER:	Community Affairs Committee and Regulated Industries Committee
SUBJECT:	Malt Beverages
DATE:	April 17, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Oxamendi	Imhof		**RI SPB 7120 as introduced**
1.	Stearns	Yeatman	CA	**Fav/CS**
2.	Oxamendi	Phelps	RC	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1714 defines the term "growler" as a clean container made of glass, ceramic, metal, or similar leak-proof material having a capacity of at least 32 ounces but no more than 128 ounces that is filled with a malt beverage and sealed on the premises at or immediately before or after the time of sale in response to an order in a face-to-face transaction.

The bill provides the restrictions and permitted practices for malt beverage manufacturers that are also licensed as a vendor (vendor-licensed brewers). The bill alters the requirements for qualifying as a vendor-licensed brewer. It permits vendor-licensed brewers to sell growlers to consumers for off-premises consumption with malt beverages that are brewed on the licensed premises by the vendor-licensed brewer. Growlers may only be filled or refilled with malt beverages that are manufactured on the licensed premises. A vendor-licensed brewer may sell malt beverages that it manufactures at another location or that are manufactured by another brewer as authorized by its vendor's license. However, the malt beverages that are manufactured at another location and that are sold for consumption off the premises must be obtained from a licensed distributor and sold to the consumer in their original sealed containers.

The bill does not prohibit the sale of malt beverages that the manufacturer obtains from a licensed distributor. It prohibits deliveries of growlers off a licensed premises. It provides that the vendor-licensed brewer is responsible for the reporting and payment of excise taxes.

The bill prohibits brew pubs from filling growlers, shipping malt beverages between licensed premises owned by the licensee, and selling or distributing malt beverages outside the licensed premises.

The bill provides a statement of legislative intent that vendor-licensed brewer and brew pub licenses constitute limited exceptions to the manufacturing and vendor licensing requirements of the Beverage Law.[1] It also provides that anything not specifically authorized in ss. 561.221(2) and (3), F.S., is prohibited unless otherwise authorized under the Beverage Law.

The bill decreases the maximum amount of the bond required for breweries from $20,000 to $5,000. It also decreases the minimum amount of the bond that the division may accept in its discretion from $10,000 to $2,500.

The bill limits the filling or refilling of growlers to vendor-licensed brewers with malt beverages that are brewed on the licensed premises, vendors with a quota license to sell alcoholic beverages only in sealed containers for consumption off the premises, and vendors licensed for consumption of malt beverages on the licensed premises, unless the license restricts the consumption of malt beverages to consumption on the premises only.

The bill limits the sale of growlers by vendor-licensed brewers to sales for consumption off the premises and requires that the sales must be conducted in face-to-face transactions.

A growler must have an unbroken seal, or its contents must be incapable of being immediately consumed. A growler must be clearly labeled as containing an alcoholic beverage, provide the name of the manufacturer, the brand, the volume, the percentage of alcohol by volume, and provide the required federal health warning notice for alcoholic beverages. A growler with a preexisting label or other identifying mark of a manufacturer or brand must be covered sufficiently to indicate the manufacturer and brand of the malt beverage being placed in the container at that refilling. The growler must be clean before being filled or refilled.

The bill provides a severability clause.

II. Present Situation:

In Florida, alcoholic beverages are regulated by the Beverage Law, which regulates the manufacture, distribution, and sale of wine, beer, and liquor via manufacturers, distributors, and vendors.[2] The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation (department) administers and enforces the Beverage Law.[3]

Three Tier System

In the United States, the regulation of alcohol has traditionally been through what is termed the "three-tier system." The system requires that the manufacture, distribution, and sale of alcoholic beverages be separated. Retailers must buy their products from distributors who in turn buy their

[1] The Beverage Law means chs. 561, 562, 563, 564, 565, 567, and 568, F.S. *See* s. 561.01(6), F.S.
[2] *See* s. 561.14, F.S.
[3] Section 561.02, F.S.

products from the manufacturers. Manufacturers cannot sell directly to retailers or directly to consumers. The system is deeply rooted in the perceived evils of the "tied house" in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.[4]

In the three-tier system, each license classification has clearly delineated functions. For example, in Florida, distributors are licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages at retail.[5] Only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.[6] Vendors are limited to purchasing their alcoholic beverage inventory from licensed distributors, manufacturer, or bottler.[7] Licensed manufacturers, distributors, and registered exporters are prohibited from being licensed as vendors.[8] In addition from being prohibited from having an interest in a vendor, manufacturers are also prohibited from distributing directly to a vendor other than to a vendor licensed under s. 561.221(2), F.S.[9] However, a manufacturer of wine may be licensed as a distributor.[10]

There are some exceptions to this regulatory system. The exceptions include allowing beer brew pubs to manufacture malt beverages and to sell them to consumers,[11] allowing individuals to bring small quantities of alcohol back from trips out-of-state,[12] and allowing in-state wineries to manufacture and sell directly to consumers.[13]

There are two license options that permit vendors to manufacture malt beverages for sale directly to consumers. Section 561.221(2), F.S., permits a vendor to be a manufacturer of malt beverages, even if the vendor is also licensed as a distributor. The malt beverages the vendor manufactures must be sold on property consisting of a single complex that includes a brewery and other structures that promote the brewery and the tourism industry of the state. The property may be divided by no more than one public street or highway. This type of license does not limit the amount of malt beverages that may be manufactured. It also does not limit the type of vendor license that the manufacturer may obtain, e.g., a license to sell beer, wine and liquor and licenses that permit package sales of other alcoholic beverages.

Section 561.221(3), F.S., permits a vendor to also be licensed as a manufacturer of malt beverages if the vendor is engaged in brewing malt beverages at a single location in an amount

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[4] Erik D. Price, *Time to Untie the House? Revisiting the Historical Justifications of Washington's Three-Tier System Challenged by Costco v. Washington State Liquor Control Board*, a copy can be found at: http://www.lanepowell.com/wp-content/uploads/2009/04/pricee_001.pdf (Last visited March 22, 2014).
[5] Section 561.14(2), F.S.
[6] Section 561.14(3), F.S. However, see discussion regarding the exception provided in s. 561.221, F.S.
[7] Section 561.14(3), F.S. Vendors may buy from vendors in a pool buying group if the initial purchase was by a single purchase by a pool buying agent.
[8] Section 561.22, F.S.
[9] Section 563.022(14), F.S.
[10] Section 561.221(1)(a), F.S.
[11] *See* s. 561.221(2), F.S., which permits the limited manufacture of beer by vendors (brew pubs).
[12] *See* s. 562.16, F.S., which permits the possession of less than one gallon of untaxed alcoholic beverages when purchased by the possessor out-of-state in accordance with the laws of the state where purchased and brought into the state by the possessor.
[13] *See* s. 561.221, F.S.

that does not exceed 10,000 kegs per year.[14] The malt beverages must be sold to consumers for consumption on the vendor's licensed premises or on contiguous licensed premises owned by the vendor. These vendors are known in the industry as "brew pubs."

Section 561.20, F.S., limits the number of alcoholic beverage licenses that permit the sale of liquor along with beer and wine that may be issued per county. The number of licenses is limited to one license per 7,500 residents within the county. These limited alcoholic beverage licenses are known as "quota" licenses. New quota licenses are created and issued when there is an increase in the population of a county. The licenses can also be issued when a county initially changes from a county which does not permit the sale of intoxicating liquors to one that does permit their sale. The quota license is the only type of alcoholic beverage license that is limited in number.

Section 565.02(a)-(f), F.S., prescribes the license taxes for vendors who are permitted to sell any alcoholic beverages, including beer, wine and distilled spirits, regardless of alcoholic content.

On-Premises or Off-Premises Consumption-Malt Beverages

Section 564.02, F.S., distinguishes between places of business where a vendor is licensed to only sell malt beverages for on-premises consumption[15] and places of business where such on-premises consumption is permitted.[16] According to the department, vendors licensed to sell malt beverages for on-premises consumption can also sell alcoholic beverages in sealed containers for the customer to take away from the licensed premises for off-premises consumption. Vendors licensed to sell malt beverages for consumption "only" on the licensed premises are not permitted to sell alcoholic beverages for off-premises consumption. The license fee for a license that does not permit the sale of alcoholic beverages in sealed containers for off-premises consumption is 50 percent less than the license fee for a license that permits the sale of sealed containers for off-premises consumption.[17]

According to alcoholic beverage industry representatives and a representative for the division, vendors with on-premises licenses routinely fill containers with a malt beverage and seal them for customers to take off-premises for later consumption. They note that current law does not prohibit this practice. The vendors typically seal the beverage container before the consumer leaves the premises so that the consumer will not violate any local ordinances that prohibit the carrying in public of open containers of alcoholic beverages or the state-law prohibition against the possession of open containers of alcoholic beverages in vehicles.[18] The beverage law does not define the term "sealed container."

In 1995, the department repealed a rule which explicitly stated that an on-premises malt beverage licensee could sell malt beverages, for consumption off-premises, in "sealed containers" and

[14] Section 561.221(3)(a)1., F.S., defines the term "keg" as 15.5 gallons.
[15] *See* s. 563.02(1)(a), F.S.
[16] *See* ss. 563.02(1)(b)-(f) and 565.045, F.S.
[17] *See* s. 563.02(1)(a), F.S.
[18] Section 316.1936, F.S.

could also sell wine and distilled spirits in the "original sealed containers as received from the distributor."[19]

Malt Beverage Containers

Section 563.06(6), F.S., requires that all malt beverages that are offered for sale by vendors must be packaged in individual containers containing no more than 32 ounces (one quart). However, malt beverages may be packaged in bulk, kegs, barrels, or in any individual container containing one gallon or more of a malt beverage regardless of individual container type.

Prior to 2001, s. 563.06(6), F.S., provided that malt beverages could be sold by vendors only in 8, 12, 16, or 32-ounce individual containers. Chapter 2001-78, L.O.F., amended that section to allow vendors to sell malt beverages in individual containers of "no more than 32 ounces."[20] The current provision that allows containers of one gallon or more was unaffected by that amendment.

Growlers

Some states permit vendors to sell malt beverages in containers known as "growlers,"[21] which typically are reusable containers of between 32 ounces and one gallon that the consumer can fill with the vendor's malt beverage for consumption off the licensed premises. According to a representative for several vendors who manufacture malt beverages,[22] the national standard size for a growler is 64 ounces. Florida law does not permit the use of a 64-ounce growler.

Tied House Evil Prohibitions

Section 561.42(1), F.S., prohibits a licensed manufacturer or distributor from assisting any vendor by any gifts or loans of money or property of any description or by the giving of any rebates of any kind whatsoever. Specifically, s. 561.42(1), F.S., provides in part:

> No licensed manufacturer or distributor of any of the beverages herein referred to shall have any financial interest, directly or indirectly, in the establishment or business of any vendor licensed under the Beverage Law; nor shall such licensed manufacturer or distributor assist any vendor by any gifts or loans of money or property of any description or by the giving of any rebates of any kind whatsoever. No licensed vendor shall accept, directly or indirectly, any gift or loan of money or property of any description or any rebates from any such licensed manufacturer or distributor; provided, however, that this does not apply

[19] Rule 7A-1.008, F.A.C., as amended on March 10, 1985. This rule was subsequently transferred to rule 61A-1.008, F.A.C., and then repealed on July 5, 1995.
[20] *See also Review of the Malt Beverage Container Size Restrictions*, Interim Report No. 2000-65, Florida Senate Committee on Regulated Industries, September 1999.
[21] The term "growlers" is derived from the late 1800s and early 1900s practice in which fresh beer was carried from the local pub to one's home by means of a small-galvanized pail. When the beer sloshed around the pail, it created a rumbling sound as the carbon dioxide escaped through the lid. *See* "*The Growler: Beer-to-Go!*," Beer Advocate (July 31, 2002). A copy of the article is available at: http://beeradvocate.com/articles/384 (Last visited January 13, 2014).
[22] According to several representatives for vendors who manufacture malt beverages and sell 32-ounce growlers, the vendors are typically licensed under s. 561.221(2), F.S.

> to any bottles, barrels, or other containers necessary for the legitimate transportation of such beverages or to advertising materials and does not apply to the extension of credit, for liquors sold, made strictly in compliance with the provisions of this section. (Emphasis supplied.)

Section 561.42(8), F.S., authorizes the division to establish rules and require reports to enforce limitation on credits and other forms of assistance. This rulemaking authority does not extend to cash deposits on beer sales, as provided in s. 563.08, F.S.

Section 561.42, F.S., defines the types of items or services that may be provided to vendors. For example, s. 561.42(10), F.S., prohibits manufacturers, distributors, importers, primary American sources of supply,[23] or brand owners or registrants, or their brokers, sales agents or sales persons, from directly or indirectly giving, lending, renting, selling, or in any other manner furnishing to a vendor any outside sign, printed, painted, electric, or otherwise.

Bond for Payment of Taxes

Section 561.37, F.S., requires that each manufacturer and distributor must file with the division a $25,000 surety bond acceptable to the division as surety for the payment of all taxes. Brewers are required to post a bond of $20,000. At the division's discretion, the division can approve a bond of less than $20,000 if the amount of business done by the brewer is of a volume that a bond of less than $20,000 would be adequate to secure the payment of all taxes assessed or authorized by the Beverage Law. The division may not assess or accept a bond of less than $10,000. The division may in its discretion require that any bond in an amount less than $20,000 be increased to an amount not to exceed $20,000.

III. Effect of Proposed Changes:

"Growler" Defined

The bill creates s. 561.01(22), F.S., to define the term "growler" as a clean container made of glass, ceramic, metal, or similar leak-proof material having a capacity of at least 32 ounces but no more than 128 ounces that is filled with a malt beverage and sealed on the premises at or immediately before or after the time of sale in response to an order in a face-to-face transaction.

Growler Sales by Vendor-Licensed Brewers

The bill amends s. 561.221(2), F.S., to alter the requirements for qualifying as a vendor-licensed brewer and to provide the restrictions and permitted practices for vendor-licensed brewers.

[23] Section 564.045(1), F.S., defines the term "primary American source of supply" as the:
> manufacturer, vintner, winery, or bottler, or their legally authorized exclusive agent, who, if the product cannot be secured directly from the manufacturer by an American distributor, is the source closest to the manufacturer in the channel of commerce from whom the product can be secured by an American distributor, or who, if the product can be secured directly from the manufacturer by an American distributor, is the manufacturer. It shall also include any applicant who directly purchases vinous beverages from a manufacturer, vintner, winery, or bottler who represents that there is no primary American source of supply for the brand and such applicant must petition the division for approval of licensure.

The bill removes the requirement that a brewery include "other structures which promote the brewery and the tourist industry of the state" in order to be eligible to be a vendor-licensed brewer. It also clarifies that the exemption for vendor-licensed brewers in s. 561.221(2), F.S., is notwithstanding the prohibitions in ss. 561.22 and 561.42, F.S., or any other provision in the Beverage Law.

Section 561.221(2)(a), F.S., permits vendor-licensed brewers to sell growlers to consumers for off-premises consumption filled or refilled with malt beverages that are brewed on the licensed premises pursuant to the requirements in s. 563.061, F.S. Growlers must be sold directly to consumers in face-to-face transactions.

A vendor-licensed brewer may sell malt beverages that are manufactured at another location, including another licensed manufacturing premises directly or indirectly owned in whole or in part by the manufacturer, as authorized by its vendor's license. However, the malt beverages that are manufactured at another location and that are sold for consumption off the premises must be obtained from a licensed distributor and sold to the consumer in their original sealed containers.

Section 561.221(2)(a), F.S., also permits a vendor-licensed brewer to sell other alcoholic beverages for on-premises or off-premises consumption, as authorized under its vendor's license, provided that such beverages are obtained from a licensed distributor.

Section 561.221(2)(b), F.S., prohibits vendor-licensed brewers from delivering sealed containers or growlers off a licensed premises, including deliveries by common or premises carrier, privately owned vehicles or other conveyance. It also prohibits consumers or other persons from arranging the delivery of any sealed container or growler off the licensed premises. It explicitly provides that the subsection does not prohibit a consumer from taking a purchased sealed container or growler to another location by a privately owned vehicle or other conveyance.

Section 561.221(2)(c), F.S., provides that the vendor-licensed brewer is responsible for the applicable reports pursuant to ss. 561.50 and 561.55, F.S.,[24] with respect to the amount of malt beverages sold or given to consumers on the licensed premises each month. It requires that they pay the applicable excise taxes to the division by the 10th day of each month for the previous month.

Section 561.221(2)(d), F.S., provides that this subsection does not preclude a vendor-licensed brewer from also holding a permanent food service license at the licensed premises.

Section 561.221(2)(d), F.S., provides that the exception for vendor-licensed brewers in this subsection is a limited exception to ss. 561.42 and 561.22, F.S. It also provides that, except as specifically provided in this subsection to permit a manufacturer of malt beverages to also be licensed as a vendor, a manufacturer of malt beverages is subject to the restrictions in ss. 561.42 and 561.22, F.S.

[24] Section 561.50, F.S., requires manufacturers and distributors to compute and submit the applicable excise taxes on alcoholic beverages along with the report required by s. 561.55, F.S., to the division each month, on or before the 10th of each month, for all beverages sold during the previous calendar month.

Brew Pubs

The bill amends s. 561.221(3), F.S., to define the restriction and permitted practices for brew pubs. It clarifies that the exemption for brew pubs in s. 561.221(3), F.S., is notwithstanding the prohibitions in ss. 561.22 and 561.42, F.S., or any other provision in the Beverage Law.

Section 561.221(3)(a)3., F.S., requires that brew pubs must hold a permanent food service license.

Section 561.221(3)(b), F.S., specifies the types of alcoholic beverages that brew pubs may sell and requires that such sales must be in face-to-face transactions with consumers. Brew pubs may only sell the following alcoholic beverages:

- Malt beverages manufactured on the licensed premises for on-premises consumption;
- Malt beverages manufactured by other brewers for on-premises consumption as authorized by its vendor's license; and
- Wine or liquor for on-premises consumption as authorized by its vendor's license.

Section 561.221(3)(c), F.S., prohibits brew pubs from shipping malt beverages between licensed premises owned by the licensee. It also prohibits the sale or distribution of malt beverages off the licensed premises, i.e., a brew pub could not sell growlers. It also clarifies that a brew pub is not a manufacturer for the purposes of s. 563.022(14), F.S., which prohibits malt beverage manufactures from having an interest in the vendor.

Section 561.221(3)(g), F.S., provides that a term "licensee," as used in this subsection, means a vendor licensed as a manufacturer of malt beverages pursuant to the section.

Legislative Intent Statement

Section 561.221(4), F.S., provides a statement of legislative intent regarding the vendor and manufacturer licenses authorized under ss. 561.221(2) and (3), F.S. It provides that these licenses constitute limited exceptions to the manufacturing and vendor licensing requirements of the Beverage Law.

Section 561.221(4), F.S., also provides that anything not specifically authorized in subsections (2) and (3) is prohibited unless otherwise authorized under the Beverage Law. The effect or intent of this provision is unclear.

Bond for Payment of Taxes

The bill amends s. 561.37, F.S., to decrease the maximum amount of the bond required for breweries from $20,000 to $5,000. It also decreases the minimum amount of the bond that the division may accept in its discretion from $10,000 to $2,500.

Conforming Provisions

The bill amends the following provisions to incorporate ss. 561.221(2) and (3), F.S.:

- Section 561.5101(1), F.S., to exempt malt beverages manufactured under ss. 561.221(2) and (3), F.S., from the requirement that malt beverages must come to rest at the licensed premises of an alcoholic beverage wholesaler (distributor) for purposes of inspection and tax-revenue control;
- Section 562.34(1), F.S., to clarify that the prohibition against the possession of containers of alcoholic beverages in this subsection does not apply to a person in possession of a growler; and
- Section 563.06(6), F.S., to exempt malt beverages sold in growlers pursuant to s. 563.061, F.S., from the requirement that all malt beverages that are offered for sale by vendors must be packaged in individual containers containing no more than 32 ounces.

The bill also reenacts s. 563.022, F.S., to incorporate the amendments made to s. 561.221(2), F.S.

Additional Limitations on Growler Sales

The bill creates s. 563.061(1), F.S., to limit the filling or refilling of growlers to the following licensees:

- Vendor-licensed brewers licensed pursuant to s. 561.221(2), F.S.;
- Vendors holding a quota license under ss. 561.20(1) and 565.02(1)(a), F.S., i.e., vendors licensed to sell alcoholic beverages only in sealed containers for consumption off the premises; and
- A vendor holding a license under s. 563.02(1)(b)-(f), s. 564.02(1)(b)-(f), or s. 565.02(1)(b)-(f), F.S., which authorize consumption of malt beverages on the premises, unless such license restricts the consumption of malt beverages to the premises only.

The bill limits the sale of growlers by these licensees to sales for consumption off the premises and requires that the sales must be conducted in face-to-face transactions.

Section 563.061(2), F.S., requires that the growler must have an unbroken seal, or that its contents must be incapable of being immediately consumed.

Section 563.06(3), F.S., requires that the growler:

- Be clearly labeled as containing an alcoholic beverage;
- Provide the name of the manufacturer, the brand, the volume, the percentage of alcohol by volume; and
- Provide the required federal health warning notice for alcoholic beverages.

It also provides that, if a growler that is being refilled has an existing label or other identifying mark of a manufacturer or brand from a prior filling or refilling, that label must be covered sufficiently to indicate the manufacturer and brand of the malt beverage being placed in the container at that refilling.

Section 563.06(4), F.S., requires that the growler must be clean before being filled or refilled.

Section 563.06(5), F.S., prohibits licensees that are authorized to fill or refill growlers from using growlers for the purpose of distribution or sale off of the manufacturer's premises or vendor's premises, except as authorized under this subsection or s. 561.221(2), F.S.

Severability

Section 9 of the bill provides a severability clause.

As noted in the *Manual for Drafting General Bills* for the Florida Senate, the "[c]ourts do not need a severability section to sever unconstitutional provisions or applications and allow the other provisions or applications to stand."[25] If a severability clause is included in a bill, the standard severability clause provides:

> If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.[26]

Effective Date

The bill provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[25] *Manual for Drafting General Bills,* Legal Research and Drafting Services, Office of the Secretary of the Senate, The Florida Senate (5th Edition, 1999) at page 50.
[26] *Id.*

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 561.01, 561.221, 561.37, 561.5101, 562.34, 563.022, and 563.06.

This bill creates section 561.061 of the Florida Statutes.

This bill creates an undesignated section of the Florida Statutes.

IX. Additional Information:

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

CS by Community Affairs on April 8, 2014:

- Altered the definition of "growler" to include any leak-proof container between 32 and 128 ounces.
- Altered the requirements a manufacturer must meet to be licensed as a vendor.

B. Amendments:

None.

497306

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Rules (Gardiner) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsections (2) and (3) of section 561.221, Florida Statutes, are amended, and subsection (4) is added to that section, to read:

561.221 Licensing of manufacturers and distributors as vendors and of vendors as manufacturers; exceptions, conditions, and limitations.—

(2)(a) Notwithstanding s. 561.22, s. 561.42, or any other

provision of the Beverage Law, the division may ~~is authorized to~~ issue a single vendor's license ~~vendor's licenses~~ to, or renew any valid, active vendor's license previously issued to, a manufacturer of malt beverages, even if the ~~such~~ manufacturer is also licensed as a distributor, for the sale of alcoholic beverages on property consisting of a single complex. The~~, which~~ property must include ~~shall include~~ a brewery ~~and such other structures which promote the brewery and the tourist industry of the state. However, such property may be divided by no more than one public street or highway~~.

(b) A manufacturer licensed as a vendor under this subsection may sell alcoholic beverages under its vendor's license as follows:

1. Malt beverages manufactured on the licensed premises for:

a. On-premises consumption, which must be served through a tap or spigot as draft beer; or

b. Off-premises consumption in growlers pursuant to s. 563.061. However, if the amount of malt beverages the manufacturer brews on the licensed premises does not exceed 2000 kegs per year, as defined in subsection (3), the manufacturer may sell those malt beverages in sealed containers, as authorized under s. 563.060 and its vendor's license, only for off-premises consumption.

2. Any other malt beverages, for on-premises consumption only, as authorized under its vendor's license, which must be obtained through a distributor and served through a tap or spigot as draft beer.

3. Any wine or liquor, for on-premises consumption only, as

497306

authorized under its vendor's license.

(c) Notwithstanding subparagraph (b)2., a manufacturer holding its vendor's license under this subsection as a quota licensee pursuant to s. 565.02(1) may also sell malt beverages brewed off the licensed premises, for off-premises consumption, in sealed containers as authorized under s. 563.06 and its vendor's license, but only if the premises was licensed under s. 565.02(1) on or before March 1, 2014. A quota license authorizing sales of malt beverages for off-premises consumption under this subparagraph may not be moved or transferred to another location at which malt beverages are brewed. All malt beverages sold under this paragraph, including those owned in whole or in part by the manufacturer but brewed offsite on premises other than the licensed manufacturing premises at that brewery site, must be obtained through a licensed distributor that is not also a licensed manufacturer.

(d) Notwithstanding subparagraph (b)3., a manufacturer holding its vendor's license under this subsection as a quota licensee pursuant to s. 565.02(1) may also sell such alcoholic beverages, for off-premises consumption, in sealed containers as authorized under its vendor's license, but only if the premises was licensed under s. 565.02(1) on or before March 1, 2014. A quota license authorizing sales of alcoholic beverages for off-premises consumption under this paragraph may not be moved or transferred to another location at which malt beverages are brewed.

(e) Notwithstanding s. 561.57(1), the delivery of any such sealed container or growler off the vendor's licensed premises, whether by common or premises carrier or by an operator of a


497306

privately owned car, truck, bus, or other conveyance, is prohibited. In addition, a consumer or other person may not arrange for the delivery off the licensed manufacturing premises to the consumer of any such sealed container or growler from a vendor licensed under this subsection, whether by common or premises carrier or by an operator of a privately owned car, truck, bus, or other conveyance. However, this subparagraph does not prohibit a consumer from taking the sealed container or growler, purchased by the consumer from a manufacturer licenses as a vendor under this subsection, from the vendor's licensed premises to another location by a privately owned car, truck, bus, or other conveyance. All sales of malt beverages under sub-subparagraph (b)1.b. in growlers for off-premises consumption are for personal use only and not for resale.

(f) A manufacturer licensed as a vendor under this subsection is responsible for applicable reports pursuant to ss. 561.50 and 561.55 with respect to the amount of malt beverages sold or given to consumers on the licensed premises each month and must pay the applicable excise taxes to the division by the 10th day of each month for the previous month.

(g) A manufacturer licensed as a vendor under this subsection may hold a permanent food service license at the licensed premises.

(h) This subsection is a limited exception to ss. 561.22 and 561.42. Except as specifically provided in this subsection to permit a manufacturer of malt beverages to also be licensed as a vendor, a manufacturer of malt beverages is subject to the restrictions in ss. 561.22 and 561.42.

(3)~~(a)~~ Notwithstanding s. 561.22, s. 561.42, or any other


497306

provision ~~provisions~~ of the Beverage Law, a ~~any~~ vendor licensed in this state may be licensed as a manufacturer of malt beverages if the vendor satisfies the requirements of this subsection. ~~upon a finding by the division that:~~

(a) The division may issue a license if it finds that all of the following conditions are met:

1. The vendor will be engaged in brewing malt beverages at a single licensed premises ~~location~~ and in an amount that ~~which~~ will not exceed 10,000 kegs per year. As used in ~~For purposes of~~ this subparagraph ~~subsection~~, the term "keg" means 15.5 gallons.

2. The malt beverages ~~so~~ brewed will be sold to consumers only for consumption on the vendor's licensed premises or on contiguous licensed premises owned or leased by the vendor.

3. The applicant holds a permanent food service license.

(b) A licensee may sell the following alcoholic beverages, which may be sold only in face-to-face transactions with consumers and only for on-premises consumption:

1. Malt beverages that are manufactured on the licensed premises.

2. Malt beverages that are manufactured by other manufacturers purchased from a distributor as authorized under its vendor's license.

3. Wine or liquor purchased from a distributor as authorized under its vendor's license.

(c) A licensee may not:

1. Ship malt beverages to or between licensed premises owned by the licensee. A licensee is not a manufacturer for the purposes of s. 563.022(14).

2. Distribute or sell malt beverages off the licensed

premises.

(d) ~~(b)~~ A licensee is ~~Any vendor which is also licensed as a manufacturer of malt beverages pursuant to this subsection shall be~~ responsible for applicable reports pursuant to ss. 561.50 and 561.55 with respect to the amount of beverage manufactured each month and must ~~shall~~ pay the applicable excise taxes ~~thereon~~ to the division by the 10th day of each month for the previous month.

(e) ~~(c)~~ A ~~It shall be unlawful for any~~ licensed distributor of malt beverages or an ~~any~~ officer, agent, or other representative thereof may not ~~to~~ discourage or prohibit a licensee ~~any vendor licensed as a manufacturer under this subsection~~ from offering malt beverages brewed for consumption on the licensed premises of the vendor.

(f) ~~(d)~~ A ~~It shall be unlawful for any~~ manufacturer of malt beverages or an ~~any~~ officer, agent, or other representative thereof may not ~~to~~ take any action to discourage or prohibit a ~~any~~ distributor of the manufacturer's product from distributing such product to a licensee ~~licensed vendor which is also licensed as a manufacturer of malt beverages pursuant to this subsection~~.

(g) As used in this subsection, the term "licensee" means a vendor licensed as a manufacturer of malt beverages pursuant to this subsection.

(4) The Legislature intends that the provisions relating to the sale of malt beverages by a malt beverage manufacturer licensed as a vendor pursuant to subsection (2) and the operation of a vendor licensed as a manufacturer pursuant to subsection (3) constitute limited exceptions to the Beverage Law


497306

with respect to the otherwise mutually exclusive licensing of manufacturers and vendors. Anything not specifically authorized in subsections (2) and (3) is prohibited unless otherwise authorized under the Beverage Law.

Section 2. Section 561.37, Florida Statutes, is amended to read:

561.37 Bond for payment of taxes.—

(1) Each manufacturer and each distributor must ~~shall~~ file with the division a surety bond acceptable to the division in the amount ~~sum~~ of $25,000 as surety for the payment of all taxes.~~, provided,~~ However, if ~~that when~~ in the discretion of the division the amount of business done by the manufacturer or distributor is of such volume that a bond in an amount of less than $25,000 will be adequate to secure the payment of all taxes assessed or authorized by the Beverage Law, the division may accept a bond in an amount of less ~~a lesser sum~~ than $25,000, but not ~~in no event shall it accept a bond of~~ less than $10,000, and it may at any time in its discretion require any bond in an amount less of than $25,000 to be increased so as not to exceed $25,000.~~; provided, however, that~~

(2) Notwithstanding subsection (1), the amount of bond required under this section for:

(a) A brewer is $5,000 ~~shall be $20,000~~, except that if ~~where,~~ in the discretion of the division~~,~~ the amount of business done by the brewer is of such volume that a bond in an amount of less than $5,000 ~~$20,000~~ will be adequate to secure the payment of all taxes assessed or authorized by the Beverage Law, the division may accept a bond in an amount of less ~~a lesser sum~~ than $5,000 ~~$20,000~~, but not ~~in no event shall it accept a bond~~


497306

~~of~~ less than $2,500 ~~$10,000~~, and it may at any time in its discretion require any bond in an amount of less than $5,000 ~~$20,000~~ to be increased so as not to exceed $5,000. ~~$20,000; provided further that the amount of the bond required for~~

(b) A wine or wine and cordial manufacturer is ~~shall be~~ $5,000. However, ~~except that,~~ in the case of a manufacturer engaged solely in the experimental manufacture of wines and cordials from Florida products, if ~~where~~ in the discretion of the division the amount of business done by such a manufacturer is of such volume that a bond in an amount of less than $5,000 will be adequate to secure the payment of all taxes assessed or authorized by the Beverage Law, the division may accept a bond in an amount of less ~~a lesser sum~~ than $5,000, but not ~~in no event shall it accept a bond of less~~ than $1,000, and it may at any time in its discretion require a bond in an amount of less than $5,000 to be increased so as not to exceed $5,000.~~;~~ ~~provided, further, that the amount of bond required for~~

(c) A distributor who sells only beverages containing not more than 4.007 percent of alcohol by volume, in counties where the sale of intoxicating liquors, wines, and beers is prohibited, or a distributor ~~and to distributors~~ who sells ~~sell~~ only beverages containing not more than 17.259 percent of alcohol by volume and wines regardless of alcoholic content, in counties where the sale of intoxicating liquors, wines, and beers is permitted, is ~~shall file with the division a surety bond acceptable to the division in the sum of~~ $25,000.~~, as surety for the payment of all taxes; provided,~~ However, if ~~that where~~ in the discretion of the division the amount of business done by such a distributor is of such volume that a bond in an


497306

amount of less than $25,000 will be adequate to secure the payment of all taxes assessed or authorized by the Beverage Law, the division may accept a bond in an amount of ~~a~~ less ~~sum~~ than $25,000, but not ~~in no event shall it accept a bond~~ less than $1,000, and it may at any time in its discretion require any bond in an amount of less than $25,000 to be increased so as not to exceed $25,000.~~; provided, further, that the amount of bond required for~~

(d) A distributor in a county having a population of 15,000 or less who procures a license by which his or her sales are restricted to distributors and vendors who have obtained licenses in the same county is~~, shall be~~ $5,000.

Section 3. Subsection (14) of section 561.42, Florida Statutes, is amended to read:

561.42 Tied house evil; financial aid and assistance to vendor by manufacturer, distributor, importer, primary American source of supply, brand owner or registrant, or any broker, sales agent, or sales person thereof, prohibited; procedure for enforcement; exception.—

(14) The division shall adopt reasonable rules governing promotional displays and advertising, which rules may ~~shall~~ not conflict with or be more stringent than the federal regulations pertaining to such promotional displays and advertising furnished to vendors by distributors, manufacturers, importers, primary American sources of supply, or brand owners or registrants, or any broker, sales agent, or sales person thereof; however:

(a) If a manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any ~~broker,~~ sales

agent~~,~~ or sales person thereof, provides a vendor with expendable retailer advertising specialties such as trays, coasters, mats, menu cards, napkins, cups, glasses, thermometers, and the like, such items may ~~shall~~ be sold only at a price not less than the actual cost to the industry member who initially purchased them, without limitation in total dollar value of such items sold to a vendor.

(b) Without limitation in total dollar value of such items provided to a vendor, a manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any ~~broker,~~ sales agent~~,~~ or sales person thereof, may rent, loan without charge for an indefinite duration, or sell durable retailer advertising specialties such as clocks, pool table lights, and the like, which bear advertising matter.

(c) If a manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any ~~broker,~~ sales agent~~,~~ or sales person thereof, provides a vendor with consumer advertising specialties such as ashtrays, T-shirts, bottle openers, shopping bags, and the like, such items may ~~shall~~ be sold only at a price not less than the actual cost to the industry member who initially purchased them, and ~~but~~ may be sold without limitation in total value of such items sold to a vendor.

(d) A manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any ~~broker,~~ sales agent~~,~~ or sales person thereof, may provide consumer advertising specialties described in paragraph (c) to consumers on any vendor’s licensed premises.

(e) A manufacturer ~~Manufacturers~~, distributor ~~distributors~~,


497306

importer ~~importers~~, brand owner ~~owners~~, or brand registrant ~~registrants~~ of malt beverages ~~beer~~, and any ~~broker,~~ sales agent~~,~~ or sales person thereof, may ~~shall~~ not conduct any sampling activity ~~activities~~ that includes the ~~include~~ tasting of a ~~their~~ product of any such entity or person at a vendor's premises licensed for off-premises sales only.

(f) A manufacturer ~~Manufacturers~~, distributor ~~distributors~~, importer ~~importers~~, brand owner ~~owners~~, or brand registrant ~~registrants~~ of malt beverages ~~beer~~, and any ~~broker,~~ sales agent~~,~~ or sales person thereof, may ~~shall~~ not engage in cooperative advertising with a vendor ~~vendors~~.

(g) A distributor ~~Distributors~~ of malt beverages ~~beer~~ may sell to a vendor ~~vendors~~ draft equipment and tapping accessories at a price not less than the cost to the industry member who initially purchased them, except there is no required charge, and the ~~a~~ distributor may exchange any parts that ~~which~~ are not compatible with a competitor's system and are necessary to dispense the distributor's brands. A distributor of malt beverages ~~beer~~ may furnish to a vendor at no charge replacement parts of nominal intrinsic value, including, but not limited to, washers, gaskets, tail pieces, hoses, hose connections, clamps, plungers, and tap markers. To ensure quality control, a distributor of malt beverages may, at no charge to a vendor, clean draft equipment and counter-pressure devices that use or dispense a malt beverage the distributor sold to the vendor. Counter-pressure and other growler-filling devices are not draft equipment or tapping accessories for purposes of this paragraph.

Section 4. Section 561.5101, Florida Statutes, is amended to read:

497306

561.5101 Come-to-rest requirement; exceptions; penalties.—

(1) For purposes of inspection and tax-revenue control, all malt beverages, except those manufactured on and sold at the brewery or vendor pursuant to s. 561.221(2) or (3), must come to rest at the licensed premises of an alcoholic beverage distributor ~~wholesaler~~ in this state before being sold to a vendor by the distributor ~~wholesaler~~. A malt beverage is considered to have come to rest under this subsection only if it has been unloaded in its entirety from the transport vehicle and placed in the distributor's warehouse inventory. The prohibition contained in this subsection does not apply to the shipment of malt beverages commonly known as private labels. The prohibition contained in this subsection does ~~shall~~ not prevent a manufacturer from shipping malt beverages for storage at a bonded warehouse facility, if the ~~provided that such~~ malt beverages are distributed as provided in this subsection or to an out-of-state entity.

(2) A ~~Any~~ person who is in the business of selling alcoholic beverages and who knowingly and intentionally sells malt beverages in a manner inconsistent with the requirements of subsection (1), whether to a vendor or to an ultimate consumer, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 5. Subsection (14) of section 563.022, Florida Statutes, is reenacted and amended to read:

563.022 Relations between beer distributors and manufacturers.—

(14) MANUFACTURER; PROHIBITED INTERESTS.—

(a) This subsection applies to:


497306

1. A manufacturer;

2. An ~~Any~~ officer, director, agent, or employee of a manufacturer; or

3. An affiliate of a ~~any~~ manufacturer, regardless of whether the affiliation is corporate or by management, direction, or control.

(b) Except as provided in paragraph (c), an ~~no~~ entity or person specified in paragraph (a) may not have an interest in the license, business, assets, or corporate stock of a licensed distributor and may not ~~nor shall such entity~~ sell directly to a ~~any~~ vendor in this state other than a vendor ~~to vendors who are~~ licensed pursuant to s. 561.221(2).

(c) An ~~Any~~ entity or person specified ~~described~~ in paragraph (a) may financially assist a proposed distributor in acquiring ownership of the distributorship through participation in a limited partnership arrangement in which the entity or person specified ~~described~~ in paragraph (a) is a limited partner and the proposed distributor seeking to acquire ownership of the distributorship is the general partner. Such a limited partnership arrangement ~~arrangements~~ may exist for no longer than 8 years from its ~~their~~ creation and may ~~shall~~ not be extended or renewed by means of a transfer of full ownership to an entity or person specified ~~described~~ in paragraph (a) followed by the creation of a new limited partnership or by any other means. In any such arrangement for financial assistance, the federal basic permit and distributor's license issued by the division shall be issued in the name of the distributor and not in the name of an entity or person specified ~~described~~ in paragraph (a). If, after the creation of a limited partnership

pursuant to this paragraph, an entity or person specified ~~described~~ in paragraph (a) acquires title to the distributorship that ~~which~~ was the subject of the limited partnership, the entity or person specified ~~described~~ in paragraph (a) shall divest itself of the distributorship within 180 days, and the distributorship shall be ineligible for limited partnership financing for 20 years thereafter. An ~~No~~ entity or person specified ~~described~~ in paragraph (a) may not ~~shall~~ enter into a limited partnership arrangement with a licensed distributor whose distributorship existed and was operated before ~~prior to~~ the creation of such limited partnership arrangement.

(d) ~~Nothing in~~ The Beverage Law does not ~~shall be construed to~~ prohibit a manufacturer from shipping products to or between its breweries without a distributor's license, but does not exempt a manufacturer from the come-to-rest requirement of s. 561.5101(1) for products shipped to or between its breweries for sale under a vendor license issued to the manufacturer pursuant to s. 562.221(2).

(e) Notwithstanding ~~the provisions of~~ paragraph (b), an ~~any~~ entity or person specified ~~named~~ in paragraph (a) may have an interest in the license, business, assets, or corporate stock of a licensed distributor for a maximum of 180 consecutive days as the result of a judgment of foreclosure against the distributor or for 180 consecutive days after acquiring title pursuant to the written request of the licensed distributor. Under either of these circumstances, manufacturer ownership of an interest in the license, business, assets, or corporate stock of a licensed distributor may ~~shall~~ only be for 180 days and only for the purpose of facilitating an orderly transfer of the

497306

distributorship to an owner not affiliated with a manufacturer.

(f) Notwithstanding ~~the provisions of~~ paragraph (b), an ~~any~~ entity or person specified ~~named~~ in paragraph (a) may have a security interest in the inventory or property of its licensed distributors to secure payment for that ~~said~~ inventory or other loans for other purposes.

Section 6. Subsections (1) and (6) of section 563.06, Florida Statutes, are amended, a new subsection (7) is created, and current subsection (7) of that section is renumbered as subsection (8) and amended, to read:

563.06 Malt beverages; imprint on individual container; size of containers; growlers; exemptions.—

(1) ~~On and after October 1, 1959,~~ All taxable malt beverages packaged in individual containers possessed by any person in the state for the purpose of sale or resale in the state, except operators of railroads, sleeping cars, steamships, buses, and airplanes engaged in interstate commerce and licensed under this section, must ~~shall~~ have imprinted thereon in clearly legible fashion by any permanent method the word "Florida" or "FL" and no other state name or abbreviation of any state name in not less than 8-point type. The word "Florida" or "FL" shall appear first or last, if imprinted in conjunction with any manufacturer's code. A facsimile of the imprinting and its location as it will appear on the individual container must ~~shall~~ be submitted to the division for approval.

(6) All malt beverages packaged in individual containers sold or offered for sale by vendors at retail in this state, except for malt beverages authorized to be sold in growlers pursuant to s. 563.061, must ~~shall~~ be in individual containers


497306

containing no more than 32 ounces of such malt beverages.~~;~~ ~~provided, however, that nothing contained in~~

(7) This section does not ~~shall~~ affect malt beverages packaged in bulk, ~~or~~ in kegs or ~~in~~ barrels, or in any individual container containing 1 gallon or more of such malt beverage regardless of individual container type.

(8)~~(7)~~ A ~~Any~~ person, firm, or corporation, or any of its agents, officers or employees, that violates ~~violating any of the provisions of~~ this section commits~~, shall be guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083; and the license, if any, is ~~shall be~~ subject to revocation or suspension by the division.

Section 7. Section 563.061, Florida Statutes, is created to read:

563.061 Malt beverages; filling or refilling of growlers.—

(1) "Growler" means a refillable container that is made of glass, ceramic, metal, or similar leak-proof material and is designed to contain a carbonated malt beverage in a capacity of 32 ounces, 64 ounces, or 128 ounces.

(2) The filling or refilling of a growler shall be in response to an order, in a face-to-face transaction, only for off-premises consumption. The growler must be filled with a malt beverage and sealed on the premises at or immediately before or after the time of sale.

(3) The filling or refilling of a growler is limited to:

(a) A manufacturer of malt beverages who holds a valid vendor's license pursuant to s. 561.221(2);

(b) A vendor holding a quota license under ss. 561.20(1) and 565.02(1)(a) with the sale of malt beverages authorized

under that license; or

(c) A vendor holding a license under s. 563.02(1)(b)-(f), s. 564.02(1)(b)-(f), or s. 565.02(1)(b)-(f), unless the license restricts the sale of malt beverages only for consumption on the licensed premises.

(4) The growler must have an unbroken seal or be incapable of being immediately consumed.

(5) The growler must be clearly labeled as containing an alcoholic beverage and provide the name of the manufacturer, the brand, the volume, the percentage of alcohol by volume, and the required federal health warning notice for alcoholic beverages. If a growler being refilled has an existing label or other identifying mark of a manufacturer or brand from a prior filling or refilling, that label must be covered sufficiently to indicate the manufacturer and brand of the malt beverage being placed in the container at that refilling.

(6) The growler must be clean prior to filling or refilling.

(7) The vendor filling or refilling a growler must leave sufficient space to allow for expansion of the contents due to changes in temperature or pressure that can reasonably be anticipated and that would otherwise result in leakage or other failure of the growler to contain the malt beverage.

(8) A licensee authorized to fill and refill growlers may not use them for purposes of distribution or sale off the manufacturer’s or vendor’s licensed premises, except as authorized under this section and s. 561.221(2).

Section 8. For the purpose of incorporating the amendments made by this act to the Beverage Law, subsection (1) of section

497306

561.11, Florida Statutes, is reenacted to read:

561.11 Power and authority of division.—

(1) The division has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of the Beverage Law.

Section 9. This act shall take effect July 1, 2014.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to malt beverages; amending s. 561.01, F.S.; defining the term "growler"; amending s. 561.221, F.S.; clarifying three-tier system exceptions and application with respect to the manufacture, distribution, and sale of malt beverages; revising requirements for licensure and operation of manufacturers and vendors; providing legislative intent; amending s. 561.37, F.S.; revising bond requirements for brewers; amending s. 561.42, F.S.; authorizing distributors of malt beverages to clean certain drafting equipment and counter-pressure devices at no charge; specifying that counter-pressure and other growler-filling devices are not drafting equipment and tapping accessories for certain purposes; amending s. 561.5101, F.S.; adding an exception to the come-to-rest requirement; specifying what constitutes coming to rest at a distributor's

497306

licensed premises; providing penalties; reenacting and amending s. 563.022(14), F.S., relating to prohibited interests between a manufacturer and a distributor of malt beverages, to incorporate the amendments made to s. 561.221(2), F.S., in a reference thereto; revising provisions relating to shipment of products to or between breweries; amending s. 563.06, F.S.; revising provisions relating to the sale of malt beverages at retail in containers of specified sizes, to conform to changes made by the act; creating s. 563.061, F.S.; providing requirements for and limitations on the filling, refilling, and sale or distribution of growlers; reenacting s. 561.11(1), F.S., relating to authority of the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation to adopt rules to implement the Beverage Law, to incorporate the amendments made to the Beverage Law by this act for such purpose; providing an effective date.

635126

LEGISLATIVE ACTION

Senate . House

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The Committee on Rules (Smith) recommended the following:

Senate Amendment (with title amendment)

Delete line 423

and insert:

more than 64 ~~32~~ ounces of such malt beverages.~~; provided, however,~~

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

And the title is amended as follows:

Delete line 21

and insert:

635126

changes made by the act; increasing the size of a malt beverage container that is authorized to be sold by vendors at retail; creating s. 563.061, F.S.;

By the Committees on Community Affairs; and Regulated Industries

578-04060-14 20141714c1

A bill to be entitled

An act relating to malt beverages; amending s. 561.01, F.S.; defining the term "growler"; amending s. 561.221, F.S.; clarifying three-tier system exceptions and application with respect to the manufacture, distribution, and sale of malt beverages; revising requirements for licensure and operation of manufacturers and vendors; providing legislative intent; amending s. 561.37, F.S., to revise bond requirements for brewers; amending s. 561.5101, F.S.; adding an exception to the come-to-rest requirement; amending s. 562.34, F.S.; authorizing the possession and transportation of a growler; reenacting s. 563.022(14), F.S., relating to prohibited interests between a manufacturer and a distributor of malt beverages, to incorporate the amendments made to s. 561.221, F.S., in a reference thereto; clarifying provisions; amending s. 563.06, F.S.; revising provisions relating to the sale of malt beverages at retail in containers of specified sizes, to conform to changes made by the act; creating s. 563.061, F.S.; providing requirements for and limitations on the filling, refilling, and sale or distribution of growlers; providing severability; providing an effective date.

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

Section 1. Subsection (22) is added to section 561.01,

578-04060-14 20141714c1

Florida Statutes, to read:

561.01 Definitions.—As used in the Beverage Law:

(22) "Growler" means a clean container made of glass, ceramic, metal, or similar leak-proof material having a capacity of at least 32 ounces but no more than 128 ounces which, in response to an order in a face-to-face transaction for off-premises consumption, is filled with a malt beverage and sealed on the premises at or immediately before or after the time of sale.

Section 2. Section 561.221, Florida Statutes, is amended to read:

561.221 Licensing of manufacturers and distributors as vendors and of vendors as manufacturers; exceptions, conditions, and limitations.—

(1)(a) Nothing contained in s. 561.22, s. 561.42, or any other provision of the Beverage Law prohibits the ownership, management, operation, or control of not more than three vendor's licenses for the sale of alcoholic beverages by a manufacturer of wine who is licensed and engaged in the manufacture of wine in this state, even if such manufacturer is also licensed as a distributor; provided that no such vendor's license shall be owned, managed, operated, or controlled by any licensed manufacturer of wine unless the licensed premises of the vendor are situated on property contiguous to the manufacturing premises of the licensed manufacturer of wine.

(b) The Division of Alcoholic Beverages and Tobacco shall issue permits to a certified Florida Farm Winery to conduct tasting and sales of wine produced by certified Florida Farm Wineries at Florida fairs, trade shows, expositions, and

festivals. The certified Florida Farm Winery shall pay all entry fees and shall have a winery representative present during the event. The permit is limited to the length of the event.

(2) Notwithstanding s. 561.22, s. 561.42, or any other provision of the Beverage Law, the division is authorized to issue vendor's licenses to a manufacturer of malt beverages, even if such manufacturer is also licensed as a distributor, for the sale of alcoholic beverages on property consisting of a single complex, which property shall include a brewery ~~and such other structures which promote the brewery and the tourist industry of the state~~. However, such property may be divided by no more than one public street or highway. A vendor's license issued under this subsection is subject to the following restrictions:

(a) Sales to consumers for off-premises consumption of malt beverages are limited to growlers that are filled or refilled with malt beverages manufactured on the licensed premises pursuant to the requirements of s. 563.061. Such sales must be made directly to consumers in face-to-face transactions. Malt beverages manufactured at another location, including another licensed manufacturing premises directly or indirectly owned in whole or in part by the manufacturer, and malt beverages manufactured by any other manufacturer may be sold as authorized by the manufacturer's vendor license, provided that malt beverages sold for consumption off the licensed premises shall be obtained from a licensed distributor and sold to the consumer in their original sealed containers. This paragraph does not prohibit the sale of other alcoholic beverages for on-premises or off-premises consumption, as authorized under the

manufacturer's vendor license, provided that such beverages are obtained from a licensed distributor.

(b) Notwithstanding s. 561.57(1), the delivery of a sealed container or growler containing a malt beverage off a licensed premises, whether by common or premises carrier or by an operator of a privately owned motor vehicle or other conveyance, is prohibited. In addition, a consumer or other person may not arrange for the delivery of a sealed container or growler containing a malt beverage off the licensed premises to the consumer, whether by common or premises carrier or by an operator of a privately owned motor vehicle or other conveyance. However, this paragraph does not prohibit a consumer from taking the sealed container or growler containing a malt beverage purchased by the consumer under this subsection from the licensed premises to another location by a privately owned motor vehicle or other conveyance.

(c) A manufacturer licensed as a vendor is responsible for applicable reports pursuant to ss. 561.50 and 561.55 with respect to the amount of malt beverages sold or given to consumers on the licensed premises each month and must pay the applicable excise taxes to the division by the 10th day of each month for the previous month.

(d) This subsection does not preclude a licensed manufacturer of malt beverages from also holding a permanent food service license at the licensed premises.

(e) This subsection is a limited exception to ss. 561.22 and 561.42. Except as specifically provided in this subsection to permit a manufacturer of malt beverages to also be licensed as a vendor, a manufacturer of malt beverages is subject to the

restrictions in ss. 561.22 and 561.42.

(3)~~(a)~~ Notwithstanding s. 561.22, s. 561.42, or any other provision ~~Notwithstanding other provisions~~ of the Beverage Law, a ~~any~~ vendor licensed in this state may be licensed as a manufacturer of malt beverages if the vendor satisfies the requirements of this subsection. ~~upon a finding by the division that:~~

(a) The division may issue a license if it finds that all of the following conditions are met:

1. The vendor will be engaged in brewing malt beverages at a single licensed premises ~~location~~ and in an amount that ~~which~~ will not exceed 10,000 kegs per year. As used in ~~For purposes of~~ this subparagraph ~~subsection~~, the term "keg" means 15.5 gallons.

2. The malt beverages ~~so~~ brewed will be sold to consumers for consumption on the vendor's licensed premises or on contiguous licensed premises owned by the vendor.

3. The applicant holds a permanent food service license.

(b) A licensee may sell the following alcoholic beverages, which may be sold only in face-to-face transactions with consumers:

1. Malt beverages that are manufactured on the licensed premises for on-premises consumption.

2. Malt beverages that are manufactured by other manufacturers for on-premises consumption as authorized under its vendor's license.

3. Wine or liquor for on-premises consumption as authorized under its vendor's license.

(c) A licensee may not:

1. Ship malt beverages to or between licensed premises

owned by the licensee. A licensee is not a manufacturer for the purposes of s. 563.022(14).

2. Distribute or sell malt beverages off the licensed premises.

(d)~~(b)~~ A licensee is ~~Any vendor which is also licensed as a manufacturer of malt beverages pursuant to this subsection shall be~~ responsible for applicable reports pursuant to ss. 561.50 and 561.55 with respect to the amount of beverage manufactured each month and must ~~shall~~ pay the applicable excise taxes ~~thereon~~ to the division by the 10th day of each month for the previous month.

(e)~~(c)~~ A ~~It shall be unlawful for any~~ licensed distributor of malt beverages or an ~~any~~ officer, agent, or other representative thereof may not ~~to~~ discourage or prohibit a licensee ~~any vendor licensed as a manufacturer under this subsection~~ from offering malt beverages brewed for consumption on the licensed premises of the vendor.

(f)~~(d)~~ A ~~It shall be unlawful for any~~ manufacturer of malt beverages or an ~~any~~ officer, agent, or other representative thereof may not ~~to~~ take any action to discourage or prohibit a ~~any~~ distributor of the manufacturer's product from distributing such product to a licensee ~~licensed vendor which is also licensed as a manufacturer of malt beverages pursuant to this subsection~~.

(g) As used in this subsection, the term "licensee" means a vendor licensed as a manufacturer of malt beverages pursuant to this subsection.

(4) The Legislature intends that the provisions relating to the sale of malt beverages by a malt beverage manufacturer

pursuant to subsection (2) and the operation of a licensed vendor pursuant to subsection (3) constitute limited exceptions to the manufacturing and vendor licensing requirements of the Beverage Law. Anything not specifically authorized in subsections (2) and (3) is prohibited unless otherwise authorized under the Beverage Law.

Section 3. Section 561.37, Florida Statutes, is amended to read:

561.37 Bond for payment of taxes.—Each manufacturer and each distributor shall file with the division a surety bond acceptable to the division in the sum of $25,000 as surety for the payment of all taxes, provided, however, that when in the discretion of the division the amount of business done by the manufacturer or distributor is of such volume that a bond of less than $25,000 will be adequate to secure the payment of all taxes assessed or authorized by the Beverage Law, the division may accept a bond in a lesser sum than $25,000, but in no event shall it accept a bond of less than $10,000, and it may at any time in its discretion require any bond in an amount less than $25,000 to be increased so as not to exceed $25,000; provided, however, that the amount of bond required for a brewer shall be $5,000 ~~$20,000~~, except that where, in the discretion of the division, the amount of business done by the brewer is of such volume that a bond of less than $5,000 ~~$20,000~~ will be adequate to secure the payment of all taxes assessed or authorized by the Beverage Law, the division may accept a bond in a lesser sum than $5,000 ~~$20,000~~, but in no event shall it accept a bond of less than $2,500 ~~$10,000~~, and it may at any time in its discretion require any bond in an amount less than $5,000

~~$20,000~~ to be increased so as not to exceed $5,000 ~~$20,000~~; provided further that the amount of the bond required for a wine or wine and cordial manufacturer shall be $5,000, except that, in the case of a manufacturer engaged solely in the experimental manufacture of wines and cordials from Florida products, where in the discretion of the division the amount of business done by such manufacturer is of such volume that a bond of less than $5,000 will be adequate to secure the payment of all taxes assessed or authorized by the Beverage Law, the division may accept a bond in a lesser sum than $5,000, but in no event shall it accept a bond of less than $1,000 and it may at any time in its discretion require a bond in an amount less than $5,000 to be increased so as not to exceed $5,000; provided, further, that the amount of bond required for a distributor who sells only beverages containing not more than 4.007 percent of alcohol by volume, in counties where the sale of intoxicating liquors, wines, and beers is prohibited, and to distributors who sell only beverages containing not more than 17.259 percent of alcohol by volume and wines regardless of alcoholic content, in counties where the sale of intoxicating liquors, wines, and beers is permitted, shall file with the division a surety bond acceptable to the division in the sum of $25,000, as surety for the payment of all taxes; provided, however, that where in the discretion of the division the amount of business done by such distributor is of such volume that a bond of less than $25,000 will be adequate to secure the payment of all taxes assessed or authorized by the Beverage Law the division may accept a bond in a less sum than $25,000 but in no event shall it accept a bond less than $1,000 and it may at any time in its discretion

require any bond in an amount less than $25,000 to be increased so as not to exceed $25,000; provided, further, that the amount of bond required for a distributor in a county having a population of 15,000 or less who procures a license by which his or her sales are restricted to distributors and vendors who have obtained licenses in the same county, shall be $5,000.

Section 4. Subsection (1) of section 561.5101, Florida Statutes, is amended to read:

561.5101 Come-to-rest requirement; exceptions; penalties.—

(1) For purposes of inspection and tax-revenue control, all malt beverages, except those manufactured and sold pursuant to s. 561.221(2) or (3) ~~s. 561.221(3)~~, must come to rest at the licensed premises of an alcoholic beverage wholesaler in this state before being sold to a vendor by the wholesaler. The prohibition contained in this subsection does not apply to the shipment of malt beverages commonly known as private labels. The prohibition contained in this subsection does ~~shall~~ not prevent a manufacturer from shipping malt beverages for storage at a bonded warehouse facility if~~, provided that~~ such malt beverages are distributed as provided in this subsection or to an out-of-state entity.

Section 5. Subsections (1) and (3) of section 562.34, Florida Statutes, are amended to read:

562.34 Containers; seizure and forfeiture.—

(1) A ~~It shall be unlawful for any~~ person may not ~~to~~ have in her or his possession, custody, or control any cans, jugs, jars, bottles, or vessels~~,~~ or any other type of containers that ~~which~~ are being used, are intended to be used, or are known by the possessor to have been used to bottle or package alcoholic

beverages.~~; however,~~ This subsection does ~~provision shall~~ not apply to a ~~any~~ person properly licensed to bottle or package such alcoholic beverages, a ~~or to any~~ person intending to dispose of such containers to a person, firm, or corporation properly licensed to bottle or package such alcoholic beverages, or a person that has in her or his possession a growler.

(3) A ~~It shall be unlawful for any~~ person may not ~~to~~ transport any cans, jugs, jars, bottles, or vessels~~,~~ or any other type of containers intended to be used to bottle or package alcoholic beverages.~~; however,~~ This subsection does ~~section shall~~ not apply to a ~~any~~ firm or corporation holding a license to manufacture or distribute such alcoholic beverages, a ~~and shall not apply to any~~ person transporting such containers to a ~~any~~ person, firm, or corporation holding a license to manufacture or distribute such alcoholic beverages, or a person transporting a growler.

Section 6. Subsection (14) of section 563.022, Florida Statutes, is reenacted and amended to read:

563.022 Relations between beer distributors and manufacturers.—

(14) MANUFACTURER; PROHIBITED INTERESTS.—

(a) This subsection applies to:

1. A manufacturer;

2. An ~~Any~~ officer, director, agent, or employee of a manufacturer; or

3. An affiliate of a ~~any~~ manufacturer, regardless of whether the affiliation is corporate or by management, direction, or control.

(b) Except as provided in paragraph (c), an ~~no~~ entity or

person specified in paragraph (a) may not have an interest in the license, business, assets, or corporate stock of a licensed distributor and may not ~~nor shall such entity~~ sell directly to a ~~any~~ vendor in this state other than a vendor ~~to vendors who are~~ licensed pursuant to s. 561.221(2).

(c) An ~~Any~~ entity or person specified ~~described~~ in paragraph (a) may financially assist a proposed distributor in acquiring ownership of the distributorship through participation in a limited partnership arrangement in which the entity or person specified ~~described~~ in paragraph (a) is a limited partner and the proposed distributor seeking to acquire ownership of the distributorship is the general partner. Such a limited partnership arrangement ~~arrangements~~ may exist for up to ~~no longer than~~ 8 years from its ~~their~~ creation and may ~~shall~~ not be extended or renewed by means of a transfer of full ownership to an entity or person specified ~~described~~ in paragraph (a) followed by the creation of a new limited partnership or by any other means. In any such arrangement for financial assistance, the federal basic permit and distributor's license issued by the division shall be issued in the name of the distributor and not in the name of an entity or person specified ~~described~~ in paragraph (a). If, after the creation of a limited partnership pursuant to this paragraph, an entity or person specified ~~described~~ in paragraph (a) acquires title to the distributorship that ~~which~~ was the subject of the limited partnership, the entity or person specified ~~described~~ in paragraph (a) shall divest itself of the distributorship within 180 days, and the distributorship shall be ineligible for limited partnership financing for 20 years thereafter. An ~~No~~ entity or person

specified ~~described~~ in paragraph (a) may not ~~shall~~ enter into a limited partnership arrangement with a licensed distributor whose distributorship existed and was operated before ~~prior to~~ the creation of such limited partnership arrangement.

(d) ~~Nothing in~~ The Beverage Law does not ~~shall be construed to~~ prohibit a manufacturer from shipping products to or between its breweries without a distributor's license.

(e) Notwithstanding ~~the provisions of~~ paragraph (b), an ~~any~~ entity or person specified ~~named~~ in paragraph (a) may have an interest in the license, business, assets, or corporate stock of a licensed distributor for a maximum of 180 consecutive days as the result of a judgment of foreclosure against the distributor or for 180 consecutive days after acquiring title pursuant to the written request of the licensed distributor. Under either of these circumstances, manufacturer ownership of an interest in the license, business, assets, or corporate stock of a licensed distributor may ~~shall~~ only be for 180 days and only for the purpose of facilitating an orderly transfer of the distributorship to an owner not affiliated with a manufacturer.

(f) Notwithstanding ~~the provisions of~~ paragraph (b), an ~~any~~ entity or person specified ~~named~~ in paragraph (a) may have a security interest in the inventory or property of its licensed distributors to secure payment for that ~~said~~ inventory or other loans for other purposes.

Section 7. Section 563.06, Florida Statutes, is amended to read:

563.06 Malt beverages; imprint on individual container; size of containers; growlers; exemptions.—

(1) On and after October 1, 1959, all taxable malt

beverages packaged in individual containers possessed by any person in the state for the purpose of sale or resale in the state, except operators of railroads, sleeping cars, steamships, buses, and airplanes engaged in interstate commerce and licensed under this section, shall have imprinted thereon in clearly legible fashion by any permanent method the word "Florida" or "FL" and no other state name or abbreviation of any state name in not less than 8-point type. The word "Florida" or "FL" shall appear first or last, if imprinted in conjunction with any manufacturer's code. A facsimile of the imprinting and its location as it will appear on the individual container shall be submitted to the division for approval.

(2) Nothing herein contained shall require such designation to be attached to individual containers of malt beverages which are transported through this state and which are not sold, delivered, or stored for sale therein, if transported in accordance with such rules and regulations as adopted by the division; nor shall this requirement apply to malt beverages packaged in individual containers and held on the premises of a brewer or bottler, which malt beverages are for sale and delivery to persons outside the state.

(3) Possession by any person in the state, except as otherwise provided herein, of more than 4 1/2 gallons of malt beverages in individual containers which do not have the word "Florida" or "FL" as herein provided, shall be prima facie evidence that said malt beverage is possessed for the purpose of sale or resale.

(4) Except as otherwise provided herein, any malt beverages in individual containers held or possessed in the state for the

purpose of sale or resale within the state which do not bear the word "Florida" or "FL" thereon shall, at the direction of the division, be confiscated in accordance with the provisions of the Beverage Law.

(5)(a) Nothing contained in this section shall require that malt beverages packaged in individual containers and possessed by any person in the state for purposes of sale or resale in the state have imprinted thereon the word "Florida" or "FL" if the manufacturer of the malt beverages can establish before the division that the manufacturer has a tracking system in place, by use of code or otherwise, which enables the manufacturer, with at least 85 percent reliability by July 1, 1996, and 90 percent reliability by January 1, 2000, to identify the following:

1. The place where individual containers of malt beverages were produced;

2. The state into which the individual containers of malt beverages were shipped; and

3. The individual distributors within the state which received the individual containers of malt beverages.

(b) Prior to shipping individual containers of malt beverages into the state which do not have the word "Florida" or "FL" imprinted thereon, the manufacturer must file an application with the division to claim the exemption contained herein and must obtain approval from the division to ship individual containers of malt beverages into the state which do not have the word "Florida" or "FL" imprinted thereon. Information furnished by the manufacturer to establish the criteria contained within paragraph (a) may be subject to an

annual audit and verification by the division. The division may revoke an approved exemption if the manufacturer refuses to furnish the information required in paragraph (a) upon request of the division, or if the manufacturer fails to permit a subsequent verification audit, or if the manufacturer fails to fully cooperate with the division during the conducting of an audit.

(c) When a distributor has information that malt beverages may have been shipped into Florida on which payment of Florida excise taxes has not been made, such information may be provided to the division and the division shall investigate to ascertain whether any violations of Florida law have occurred.

(6) All malt beverages packaged in individual containers sold or offered for sale by vendors at retail in this state, except for malt beverages sold in growlers pursuant to s. 563.061, must ~~shall~~ be in individual containers containing no more than 32 ounces of such malt beverages.~~; provided, however, that nothing contained in~~ This section does not ~~shall~~ affect malt beverages packaged in bulk or in kegs or in barrels or in any individual container containing 1 gallon or more of such malt beverage regardless of individual container type.

(7) Any person, firm, or corporation, its agents, officers or employees, violating any of the provisions of this section, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083; and the license, if any, shall be subject to revocation or suspension by the division.

Section 8. Section 563.061, Florida Statutes, is created to read:

563.061 Malt beverages; filling or refilling of growlers.—

(1) The filling or refilling of a growler is limited to:

(a) A manufacturer of malt beverages who holds a valid vendor's license pursuant to s. 561.221(2) if the growler is filled or refilled with malt beverages manufactured on the licensed premises for sale for off-premises consumption to consumers in a face-to-face transaction on the licensed premises;

(b) A vendor holding a quota license under ss. 561.20(1) and 565.02(1)(a) with malt beverages authorized under that license for sale for off-premises consumption to consumers in a face-to-face transaction on the licensed premises; or

(c) A vendor holding a license under s. 563.02(1)(b)-(f), s. 564.02(1)(b)-(f), or s. 565.02(1)(b)-(f) which authorizes consumption of malt beverages on the premises, unless such license restricts the consumption of malt beverages to the premises only.

(2) The growler must have an unbroken seal, or its contents must be incapable of being immediately consumed.

(3) The growler must be clearly labeled as containing an alcoholic beverage and provide the name of the manufacturer, the brand, the volume, the percentage of alcohol by volume, and the required federal health warning notice for alcoholic beverages. If a growler being refilled has an existing label or other identifying mark of a manufacturer or brand from a prior filling or refilling, that label must be covered sufficiently to indicate the manufacturer and brand of the malt beverage being placed in the container at that refilling.

(4) The growler must be clean before being filled or

refilled.

(5) A licensee authorized to fill and refill growlers may not use growlers for purposes of distribution or sale outside the manufacturer's or vendor's licensed premises, except as authorized under this subsection and s. 561.221(2).

Section 9. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 10. This act shall take effect July 1, 2014.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 326
INTRODUCER:	Judiciary Committee and Senator Thompson
SUBJECT:	Victims of Wrongful Incarceration
DATE:	April 17, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	**Fav/CS**
2.	Cellon	Cannon	CJ	**Favorable**
3.	Clodfelter	Kynoch	AP	**Favorable**
4.	Brown	Phelps	RC	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 326 amends the "Victims of Wrongful Incarceration Compensation Act" (act) to make a limited expansion in the type of evidence a claimant may use as proof of eligibility for compensation as a wrongfully incarcerated person. Under the bill, a claimant is "innocent of the offenses charged" and eligible for compensation if:

- The Governor by an executive order appointed a special prosecutor to review the claimant's conviction;
- The special prosecutor entered a nolle prosequi for charges for which the claimant was convicted and sentenced to death; and
- The claimant was convicted and sentenced to death before January 1, 1980.

Under current law, a claimant's eligibility for compensation is established through a court order vacating the claimant's conviction and sentence as the result of exonerating evidence.

A claimant who is eligible for compensation under the criteria in the bill must apply to the Department of Legal Affairs (DLA) for compensation. The same application documents currently required for compensation under the existing criteria are required for a claimant who is eligible for compensation under the bill, except that the certified copy of the nolle prosequi or nolle prosequi memorandum replaces the requirement of the court order vacating conviction and sentence.

Current amounts and forms of compensation, such as monetary compensation, an educational tuition and fee waiver, and the reimbursement of fines, penalties, court costs, and reasonable attorney's fees available to wrongfully incarcerated persons are equally available to wrongfully incarcerated persons qualifying for redress under the bill. Similarly, timelines for the DLA to review an application and related decision-making are the same as in current law.

The bill does not affect the provision of existing law which makes a wrongfully incarcerated person ineligible for compensation as the result of a disqualifying felony conviction.

A claimant seeking compensation under the expanded eligibility criteria in the bill must apply to the DLA by July 1, 2016.

According to the Office of State Court Administrator and the Department of Legal Affairs, the bill has an insignificant fiscal impact.

II. Present Situation:

Victims of Wrongful Incarceration Compensation Act and Postconviction DNA Testing

In 2001, postconviction DNA testing became more widely available in Florida. It was a statutory recognition that the science behind DNA testing was evolving and was reliable evidence of identity.[1] In cases where DNA evidence exists at the crime scene and is collected and processed properly, DNA has been the evidence which can help solve "cold cases" and provide the basis for exonerating the innocent.

The Florida Legislature established the "Victims of Wrongful Incarceration Compensation Act" in 2008.[2] The act defines a wrongfully incarcerated person as:

> a person whose felony conviction and sentence have been vacated by a court of competent jurisdiction and … the original sentencing court has issued its order finding that the person neither committed the act nor the offense that served as the basis for the conviction and incarceration and that the person did not aid, abet, or act as an accomplice or accessory to a person who committed the act or offense.[3]

The impetus for the act seems to have been the number of exonerations that were occurring in Florida due to DNA evidence showing people were innocent of committing crimes for which they were incarcerated and the Legislature's interest in compensating these wrongfully incarcerated people.[4]

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[1] *See* Ch. 2001-97, L.O.F.; s. 925.11 and s. 943.3251, F.S.; see also *Sireci v. State*, 773 So.2d 34 (Fla. 2000) noting that "DNA typing was recognized in this state as a valid test as early as 1988." It should be noted, however, that in crimes that occurred long before DNA testing was admitted in evidence by the courts, physical evidence from a crime scene was likely collected and processed much differently than it is now because there was no expectation that such scientific evidence existed.

[2] Chapter 2008-39, L.O.F.

[3] Section 961.02(4), F.S.

[4] "The Bill Analysis and Fiscal Impact Statement prepared by the staff of the Judiciary Committee demonstrates that the Victims of Wrongful Incarceration Compensation Act was prompted by cases in which DNA evidence had exonerated

Disqualifying Felonies

To be eligible for compensation, a wrongfully incarcerated person must not have a disqualifying felony, which is one of the following situations:

- The person had a prior conviction or pled guilty or nolo contendere to a felony offense in this state, a federal offense that is a felony, or to an offense in another state that would be a felony in this state;
- The person was convicted of, or pled guilty or nolo contendere to, a felony offense while wrongfully incarcerated; or
- While wrongfully incarcerated, the person was serving a concurrent sentence for another felony for which the person was not wrongfully convicted.[5]

Court Process of Establishing Status as a Wrongfully Incarcerated Person

The claimant first files a petition with the original sentencing court seeking status as a wrongfully incarcerated person eligible for compensation. The claimant must allege in the petition verifiable and substantial evidence of actual innocence exists and the claimant is not disqualified from seeking compensation.[6]

The prosecuting authority has 30 days to submit a response to the court.[7] Based on the prosecuting attorney's response, the court will either find the petitioner has met his or her burden through clear and convincing evidence of innocence, or based on a preponderance of the evidence, the petitioner is ineligible for compensation due to a separate disqualifying felony.[8] If the court finds the petitioner ineligible, the court will dismiss the petition.[9]

If the prosecuting attorney contests the petition and raises issues of fact on the question of innocence, an administrative law judge must determine whether the petitioner is eligible for compensation.[10] The original sentencing court will then review the administrative law judge's finding and issue its own order within 60 days.[11]

Application Requirements for the Department of Legal Affairs

After receiving a court order vacating the conviction and the sentence, the claimant must file an application with the Department of Legal Affairs (DLA) within two years after the original sentencing court enters its order finding the person is a wrongfully incarcerated person eligible for compensation.[12]

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defendants. *See* Fla. S. Bill Analysis & Fiscal Impact Statement of Mar. 26, 2008, § 2 for Bill CS/SB 756, p. 2 ("In Florida, at least nine people have been exonerated or released from incarceration since 2000, as a result of post-conviction DNA testing."). The legislature was concerned about compensating persons who were actually innocent, but not necessarily about paying people who had been found not guilty." *Fessenden v. State*, 52 So. 3d (Fla. 2d DCA 2010).

[5] Section 961.04, F.S.

[6] Section 961.03(1)(a)1. and 2., F.S.

[7] Section 961.03(2), F.S.

[8] Section 961.03(3) and (4), F.S.

[9] Section 961.03(4)(a), F.S.

[10] Section 961.03(5), F.S.

[11] Section 961.03(6)(d), F.S.

[12] Section 961.05(1), F.S.

The claimant must provide through application:

- A certified copy of the order vacating the conviction and sentence;
- A certified copy of the original sentencing court's order finding the claimant to be a wrongfully incarcerated person who is eligible for compensation (meaning not disqualified);
- Certified copies of the original judgment and sentence;
- Documentation of the length of sentence served, including documentation from the Department of Corrections (DOC) showing the person's admission and release from the custody of the DOC;
- Proof of identification, including two sets of fingerprints taken by a law enforcement agency and a current form of photo identification, showing that the applicant is the person wrongfully incarcerated;
- Supporting documentation of fines, penalties, and court costs imposed and paid by the wrongfully incarcerated person;
- Supporting documentation of reasonable attorney's fees and expenses; and
- Any documentation required by the DLA.[13]

The DLA forwards one set of fingerprints each to the Department of Law Enforcement (FDLE) and the Federal Bureau of Investigation (FBI) for a criminal records background check of the applicant.[14]

The DLA must notify the applicant of errors or omissions within 30 calendar days after receipt of the application and provide an opportunity to correct the application within 15 days.[15]

The DLA has 90 days to process a claim and must notify the claimant within 5 business days after its determination. If the DLA determines the applicant meets all requirements, the applicant is eligible for compensation.[16]

Compensation

Compensation consists of:

- Monetary compensation, at the rate of $50,000 for each year of wrongful incarceration, subject to proration and inflation based on the Consumer Price Index;
- A waiver of tuition and fees for up to 120 hours of instruction at a public career center, community college, or state university;
- A refund of fines, penalties, and court costs imposed and paid;
- Reasonable attorney's fees and expenses incurred and paid; and
- Immediate expunction, including administrative expunction, of the person's criminal record of the wrongful arrest, conviction, and incarceration.

[13] Section 961.05(4), F.S.
[14] Section 961.05(5), F.S.
[15] Section 961.05(6), F.S.
[16] Section 961.05(6) and (7), F.S.

Total compensation is capped at $2 million.[17]

Wrongfully Incarcerated Persons Ineligible for Relief under Chapter 961, F.S.

Although the Victims of Wrongful Incarceration Compensation Act specifically provides compensation for wrongfully incarcerated persons, not all wrongfully incarcerated persons are eligible for relief under the act.

James Richardson was the first man to file a claim under the act. Mr. Richardson was convicted of murdering one of his children by poisoning (although all of his seven children and step-children died during the tragedy), in Arcadia in 1968. He spent over 21 years in prison, four of them on Death Row[18] before his sentence was eventually vacated and he was granted a new trial in 1989. The trial never occurred because the Miami-Dade State Attorney who had been assigned by the Governor to investigate allegations against the state of suborning perjury, using perjured testimony to obtain a conviction, and suppressing exculpatory evidence filed a *nolle prosequi* in the case, thereby closing the case to further proceedings by the State.[19]

Mr. Richardson and DeSoto County subsequently settled a lawsuit over his wrongful prosecution for $150,000. The State contested his claim under the act, however, and the matter went to a hearing before an Administrative Law Judge (ALJ) on July 17, 2009.[20] At the hearing, Mr. Richardson testified he did not kill his children and took two approaches to provide verifiable and substantial evidence of his innocence in support of his testimony.

He first relied upon the investigation conducted by the Miami-Dade State Attorney and the testimony of one of its participants. Mr. Richardson's second approach was to attempt to show the babysitter had murdered the children by presenting facts regarding the timing of her access to the children, her ability to poison the children's lunch, her suspicious behavior during the minutes after the children became violently ill, and a possible motive for her actions.[21] A 1988 affidavit written by the Arcadia Chief of Police in which he opined Mr. Richardson had been framed and the babysitter was the guilty party was also presented as evidence at the hearing.[22]

The ALJ found there to be "clear and convincing evidence that the investigation leading up to (Mr. Richardson's) prosecution and conviction was incomplete," that there was "conflicting evidence," that critical facts were never determined, conflicting statements were withheld from the defense, the State presented perjured testimony from jailhouse informants and apparently the

[17] Section 961.06(1), F.S.
[18] Richardson's death sentence was commuted to 25 years to life after the U.S. Supreme Court decided the 1972 *Furman v. Georgia* case that found unconstitutional procedural errors in capital cases and which required resentencing in cases where the death penalty had been handed down (408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972)).
[19] Florida Commission on Capital Cases, "Case Histories: A Review of 23 Individuals Released from Death Row," June 20, 2002; see also Sherrer, "Arcadia and the Twenty Year Effort to Exonerate James Joseph Richardson," http://justicedenied.org/arcadia.htm, September 11, 2008.
[20] *Id.* See also "Wrongly jailed inmate seeks compensation," the Associated Press, July 17, 2009, reported at http://www2.tbo.com.
[21] *Id.*
[22] *Id.*

sheriff, and that the "investigation appeared to focus only on (Mr. Richardson) as a suspect and not also on others whose involvement was suspicious."[23]

The ALJ found that while there *was* an absence of evidence proving Mr. Richardson guilty beyond a reasonable doubt (at the murder trial), there *was not* sufficient evidence at the hearing to find Mr. Richardson actually innocent as required by the act.[24]

The ALJ explained that the act requires consideration of the *factual sufficiency* (of the evidence) "[i]n other words, proof of actual innocence is required."[25] Paragraph 38 of the ALJ's findings of fact indicates that "hearsay," "suggestions," "opinion testimony," memoranda outlining the Governor-ordered investigation and responses thereto, testimony by individuals as to what they considered during their respective investigations, and Mr. Richardson's own testimony denying his guilt did not constitut verifiable and substantial evidence of his innocence.[26]

Upon reviewing the ALJ's recommended order and a transcript of the hearing, the trial court entered its order denying Mr. Richardson's claim.[27] Mr. Richardson appealed the court's order and it was affirmed by the Second District Court of Appeal.[28]

III. Effect of Proposed Changes:

This bill makes a limited expansion in the type of evidence a claimant may use as proof of eligibility for compensation as a wrongfully incarcerated person under the "Victims of Wrongful Incarceration Compensation Act." Under the bill, a claimant is "innocent of the offenses charged" and eligible for compensation if:

- The Governor by an executive order appointed a special prosecutor to review the claimant's conviction;
- The special prosecutor entered a nolle prosequi for charges for which the claimant was convicted and sentenced to death; and
- The claimant was convicted and sentenced to death before January 1, 1980.

Under current law, a claimant's eligibility for compensation is established through a court order vacating the claimant's conviction and sentence as the result of exonerating evidence.

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[23] Recommended Order, *Richardson v. State*, Case No. 09-2718VWI, August 21, 2009.
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Richardson v. State*, Case No. 09-2718VWI, Final Order, October 23, 2009. It is interesting to note that as in the Richardson case, some 41 years after a crime occurred it is unlikely verifiable and substantial evidence of innocence is available to a claimant in a case where DNA evidence is nonexistent.
[28] *Richardson v. State*, 2010 WL 5464239 (Fla. 2d DCA December 29, 2010), referencing *Fessenden v. State*, 52 So.3d 35 (Fla. 2d DCA 2010) in which Fessenden's conviction was overturned on a *matter of law*. It was not overturned because the State failed to prove wrongdoing. In the *Fessenden* case analysis, the Court notes that "[w]hen an appellate court reverses a judgment and sentence for lack of evidence, it does not make any determination that the defendant is actually innocent; it merely determines that the State did not provide evidence that could support a verdict of guilt beyond a reasonable doubt. There is a substantial difference in our system of justice between the concept of 'not guilty' and that of 'actual innocence.'"

Under the bill, just as for other claims for compensation under ch. 961, F.S., only the wrongfully incarcerated person may pursue a claim. An estate or a personal representative of an estate is prohibited from filing a claim on behalf of a wrongfully incarcerated person.

To receive compensation, the wrongfully incarcerated person must submit an application to the DLA which includes:

- A certified copy of the nolle prosequi or nolle prosequi memorandum;
- Certified copies of the original judgment and sentence;
- Documentation of the length of sentence served, including from the Department of Corrections (DOC) showing the person's admission and release from the custody of the DOC;
- Proof of identification, including two sets of fingerprints taken by a law enforcement agency of this state and a current form of photo identification;
- Supporting documentation of fines, penalties, and courts costs imposed and paid by the wrongfully incarcerated person;
- Supporting documentation of reasonable attorney's fees and expenses; and
- Any documentation required by the DLA.

Application requirements are identical to the current requirements under s. 961.05, F.S., except instead of requiring a court order vacating conviction and sentence, a nolle prosequi entered by the special prosecutor is required. Likewise, a mandatory background check confirming an absence of disqualifying felonies remains in place and the timelines for the DLA to process applications are the same.

If the DLA determines a claimant meets the requirements of the act, the wrongfully incarcerated person is entitled to the same forms and amounts of compensation currently provided in law.

The bill clarifies the Chief Financial Officer (CFO) may purchase multiple annuities selected by a wrongfully incarcerated person, instead of a single annuity, with the compensation awarded under the Victims of Wrongful Incarceration Compensation Act. In purchasing the annuities, the CFO must maximize the benefits to the wrongfully incarcerated person.

A claimant seeking compensation under the expanded eligibility criteria in the bill must apply to the DLA by July 1, 2016.

The bill takes effect July 1, 2014 and is repealed July 1, 2018.

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 Office of the State Courts Administrator does not expect a fiscal impact.[29]

The Department of Legal Affairs (DLA) does not expect a fiscal impact. To date, the DLA indicates seven claims have been made since the inception of ch. 961, F.S., in 2008. Of these, three claims have been paid in the cases of Leroy McGee (2010), James Bain (2011), and Luis Diaz (2012). The DLA denied one claim, that of Jarvis McBride (2012). Three other claims resulted in findings of ineligibility or incomplete submission of application: Robert Lewis (2011), Edwin Lampkin (2012), and Ricardo Johnson (2013).

The DLA has incurred insignificant costs to process applications for compensation due to the scarcity of claims to date and because the claimant is responsible for providing necessary documentation.[30]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 961.055 of the Florida Statutes.

This bill creates the following sections of the Florida Statutes: 961.055 and 961.056.

[29] Office of the State Courts Administrator, *2014 Judicial Impact Statement SB 326* (February 6, 2014).
[30] Email correspondence with Rob Johnson, Director of Legislative and Cabinet Affairs, Office of the Attorney General (February 5, 2014).

IX. Additional Information:

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

CS by Judiciary on February 11, 2014:
The committee substitute:

- Clarifies that the Chief Financial Officer (CFO) may purchase multiple annuities selected by a wrongfully incarcerated person instead of a single annuity.
- Specifies that in entering into annuity contracts for the compensation awarded under the Victims of Wrongful Incarceration Compensation Act, the CFO must maximize the benefit to the wrongfully incarcerated person.

B. Amendments:

None.

904396

LEGISLATIVE ACTION

Senate . House

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The Committee on Rules (Lee) recommended the following:

Senate Amendment

Delete line 40
and insert:
961.03 and 961.05 in the determination of wrongful

By the Committee on Judiciary; and Senator Thompson

590-01753-14 2014326c1

A bill to be entitled

An act relating to victims of wrongful incarceration; creating s. 961.055, F.S.; providing that a wrongfully incarcerated person who was convicted and sentenced to death on or before December 31, 1979, is exempt from certain application procedures for compensation if a special prosecutor issues a nolle prosequi after reviewing the defendant's conviction; creating s. 961.056, F.S.; providing alternative procedures for applying for compensation; requiring the claimant to file an application with the Department of Legal Affairs within a specified time; requiring the application to include certain information and documents; providing that the claimant is entitled to compensation if all requirements are met; providing that the section is repealed on a specified date; amending s. 961.06, F.S.; requiring the Chief Financial Officer to issue payment to an insurance company or other financial institution authorized to issue annuity contracts to purchase an annuity or annuities selected by the wrongfully incarcerated person; authorizing the Chief Financial Officer to execute all necessary agreements to implement compensation and to maximize the benefit to the wrongfully incarcerated person; requiring the wrongfully incarcerated person to sign a waiver before the department's approval of the application; providing an effective date.

590-01753-14 2014326c1

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

Section 1. Section 961.055, Florida Statutes, is created to read:

961.055 Application for compensation for a wrongfully incarcerated person; exemption from application by nolle prosequi.—

(1) A person alleged to be a wrongfully incarcerated person who was convicted and sentenced to death on or before December 31, 1979, is exempt from the application provisions of ss. 961.03, 961.04, and 961.05 in the determination of wrongful incarceration and eligibility to receive compensation pursuant to s. 961.06 if:

(a) The Governor issues an executive order appointing a special prosecutor to review the defendant's conviction; and

(b) The special prosecutor thereafter enters a nolle prosequi for the charges for which the defendant was convicted and sentenced to death.

(2) The nolle prosequi constitutes conclusive proof that the defendant is innocent of the offenses charged and is eligible to receive compensation under this chapter.

(3) This section is repealed July 1, 2018.

Section 2. Section 961.056, Florida Statutes, is created to read:

961.056 Alternative application for compensation for a wrongfully incarcerated person.—

(1) A person who has been determined to be a wrongfully incarcerated person pursuant to s. 961.055 is eligible to apply to the department to receive compensation for such wrongful

incarceration.

(a) Only the wrongfully incarcerated person may apply for compensation. The estate of, or personal representative for, a decedent may not apply on behalf of the decedent for compensation for wrongful incarceration.

(b) In order to receive compensation, the wrongfully incarcerated person shall, by July 1, 2016, submit to the Department of Legal Affairs an application for compensation irrespective of whether the person has previously sought compensation under this chapter. The application must include:

1. A certified copy of the nolle prosequi or nolle prosequi memorandum;

2. Certified copies of the original judgment and sentence;

3. Documentation demonstrating the length of the sentence served, including documentation from the Department of Corrections regarding the person's admission into and release from the custody of the Department of Corrections;

4. Positive proof of identification, as evidenced by two full sets of fingerprints prepared by a law enforcement agency of this state and a current form of photo identification;

5. Supporting documentation of any fine, penalty, or court costs imposed on and paid by the wrongfully incarcerated person as described in s. 961.06(1);

6. Supporting documentation of any reasonable attorney fees and expenses as described in s. 961.06(1); and

7. Any other documentation, evidence, or information required by rules adopted by the department.

(2) The law enforcement agency that prepared the applicant's set of fingerprints shall forward both full sets to

the Department of Law Enforcement. The Department of Law Enforcement shall retain one set for statewide criminal records checks and forward the second set of fingerprints to the Federal Bureau of Investigation for national criminal records checks. The results of the state and national records checks shall be submitted to the department.

(3) Upon receipt of an application, the department shall examine the application and, within 30 days after receipt of the application, shall notify the claimant of any error or omission and request any additional information relevant to the review of the application.

(a) The claimant has 15 days after proper notification by the department to correct any identified error or omission in the application and to supply any additional information relevant to the application.

(b) The department may not deny an application for failure of the claimant to correct an error or omission or to supply additional information unless the department has notified the claimant of such error or omission and requested the additional information within the 30-day period specified in this subsection.

(c) The department shall process and review each complete application within 90 calendar days.

(d) Once the department determines whether a claim for compensation meets the requirements of this chapter, the department shall notify the claimant within 5 business days after that determination.

(5) If the department determines that a claimant meets the requirements of this chapter, the wrongfully incarcerated person

is entitled to compensation under s. 961.06.

(6) This section is repealed July 1, 2018.

Section 3. Subsections (4) and (5) of section 961.06, Florida Statutes, are amended to read:

961.06 Compensation for wrongful incarceration.—

(4) The Chief Financial Officer shall issue payment in the amount determined by the department to an insurance company or other financial institution admitted and authorized to issue ~~purchase an~~ annuity contracts in this state to purchase an annuity or annuities, selected by the wrongfully incarcerated person, ~~on behalf of the claimant~~ for a term of not less than 10 years. The Chief Financial Officer is directed to execute all necessary agreements to implement this act and to maximize the benefit to the wrongfully incarcerated person. The terms of the annuity or annuities shall:

(a) Provide that the annuity or annuities may not be sold, discounted, or used as security for a loan or mortgage by the wrongfully incarcerated person ~~applicant~~.

(b) Contain beneficiary provisions for the continued disbursement of the annuity or annuities in the event of the death of the wrongfully incarcerated person ~~applicant~~.

(5) Before the department approves the application for compensation ~~Chief Financial Officer draws the warrant for the purchase of the annuity~~, the wrongfully incarcerated person ~~claimant~~ must sign a release and waiver on behalf of the wrongfully incarcerated person ~~claimant~~ and his or her heirs, successors, and assigns, forever releasing the state or any agency, instrumentality, or any political subdivision thereof, or any other entity subject to ~~the provisions of~~ s. 768.28, from

all present or future claims that the wrongfully incarcerated person ~~claimant~~ or his or her heirs, successors, or assigns may have against such entities arising out of the facts in connection with the wrongful conviction for which compensation is being sought under the act. ~~The release and waiver must be provided to the department prior to the issuance of the warrant by the Chief Financial Officer.~~

Section 4. This act shall take effect July 1, 2014.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 372
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development) and Senator Galvano
SUBJECT:	Developments of Regional Impact
DATE:	April 8, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stearns	Yeatman	CA	**Favorable**
2.	Pingree	Martin	ATD	**Fav/CS**
3.	Pingree	Kynoch	AP	**Fav/CS**
4.	Stearns	Phelps	RC	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 372 reduces the minimum population and density requirements for counties to qualify as a dense urban land area (DULA). Land development projects are exempt from development of regional impact (DRI) review if they are located in a DULA. This bill would designate an additional 7 counties and 20 municipalities as DULAs. The bill eliminates the adoption of an urban service area as criteria for designation for a DULA, with the exception of a county with a population of at least 1 million which has approved, by countywide election, a charter provision requiring an affirmative vote of more than a simple majority to extend the urban service area. In such a county, the DULA DRI exemption only applies within an urban service area that has been adopted into the comprehensive plan.

The bill also exempts any proposed development located in a DULA from the DRI aggregation criteria.

The bill has an indeterminate, but insignificant fiscal impact.

II. Present Situation:

Development of Regional Impact Background

A DRI is defined in s. 380.06, F.S., as "any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county." Section 380.06, F.S., provides for both state and regional review of local land use decisions involving DRIs. Regional Planning Councils (RPCs) coordinate the review process with local, regional, state and federal agencies and recommend conditions of approval or denial to local governments. DRIs are also reviewed by the Department of Economic Opportunity (DEO) for compliance with state law and to identify the regional and state impacts of large-scale developments. Local DRI development orders may be appealed by the owner, the developer, or the DEO (the state land planning agency) to the Governor and Cabinet, sitting as the Florida Land and Water Adjudicatory Commission.[1] Section 380.06(24), F.S., exempts numerous types of projects from review as a DRI.

The DRI program was initially created in 1972. Since that time, the state has required all local governments to adopt local comprehensive plans. The Environmental Land Management Study Committee (ELMS III) in 1992 recommended that the DRI program be eliminated in the largest local governments and relegated to an enhanced version of the intergovernmental coordination element (ICE) in their local plans.[2] After much controversy, this recommendation never fully came to fruition and the DRI program continued. The Legislature has made changes to the DRI program in the past for various reasons.

DRI Review

All developments that meet the DRI thresholds and standards provided by statute[3] and rules adopted by the Administration Commission[4] are required to undergo DRI review, unless the Legislature has provided an exemption, the development is located within a DULA, or is located in a planning area receiving a legislative exemption such as a sector plan or rural land stewardship area.[5] The types of developments required to undergo DRI review upon meeting the specified thresholds and standards include certain airports, attraction and recreation facilities, office development, retail and service development, multiuse development, residential development, schools, and recreational vehicle development.[6] The DEO, a RPC, or the local government may request the Administration Commission to increase or decrease the thresholds for part of the local government's jurisdiction or for the entire jurisdiction.[7] Over the years, the Legislature also has increased the thresholds that determine which projects are subject to DRI review.

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[1] Section 380.07(2), F.S.
[2] *See* Richard G. Rubino and Earl M. Starnes, *Lessons Learned? The History of Planning in Florida*. Tallahassee, FL: Sentry Press, 2008. ISBN 978-1-889574-31-8.
[3] Section 380.0651, F.S.
[4] Rule 28-24, F.A.C.
[5] *See* the section "DRI Exemptions."
[6] Section 380.0651, F.S.
[7] Section 380.06(3), F.S.

Florida's 11 RPCs coordinate the multi-agency review of proposed DRIs. RPCs are recognized as Florida's only multipurpose regional entity that plans for and coordinates intergovernmental solutions to growth-related problems on greater-than-local issues, provides technical assistance to local governments, and meets other needs of the communities in each region.[8] A DRI review begins by the developer contacting the RPC with jurisdiction over the proposed development to arrange a pre-application conference.[9] A developer or the RPC may also request other affected state and regional agencies to participate in the conference and to help identify the types of permits issued by the agencies, the level of information required, and the permit issuance procedures. At the pre-application conference, the RPC is to provide the developer with information about the DRI process and use the pre-application conference to identify issues, coordinate appropriate state and local agency requirements, and otherwise efficiently review the proposed development.

An agreement may also be reached between the RPC and the developer regarding assumptions and methodology to be used in the application for development approval. If an agreement is reached, the reviewing agencies may not later object to the agreed upon assumptions and methodologies unless the project changes or subsequent information makes the assumptions or methodologies no longer relevant. In an effort to reduce paperwork, discourage unnecessary gathering of data, and to coordinate federal, state, and local environmental reviews with the DRI review process, s. 380.06(7)(b), F.S., provides that the developer may enter into a binding written agreement with the RPC to eliminate certain questions from the application for development approval when those questions are found to be unnecessary for DRI review. The reviewing agencies may make only recommendations or comments regarding a proposed development which are consistent with the statutes, rules, or adopted local government ordinances that are applicable to developments in the jurisdiction where the proposed development is located.[10]

The RPC also assists with technical planning aspects of the project, which can be beneficial to rural local governments that often have smaller planning staffs. Upon completion of the pre-application conference with all parties, the developer may file an application for development approval with the local government, RPC, and the state land planning agency. The RPC reviews the application for sufficiency and may request additional information (no more than twice) if the application is deemed insufficient.[11]

Once the RPC determines the application is sufficient or the developer declines to provide additional information, the local government must hold a public hearing on the application for development within 90 days, and must publish notice at least 60 days in advance of the hearing.[12] Within 50 days after receiving notice of the public hearing, the RPC is required to prepare and submit to the local government a report and recommendations on the regional impact of the

[8] Section 186.502, F.S.
[9] Section 380.06(7), F.S.
[10] *Id.*
[11] Section 380.06(10), F.S.
[12] Section 380.06(11), F.S.

proposed development.[13] The RPC is required to identify regional issues[14] and specifically examine whether:

- The development will have a favorable or unfavorable impact on state or regional resources or facilities identified in the applicable state (state comprehensive plan) or regional (strategic regional policy plan) plans.
- The development will significantly impact adjacent jurisdictions.

In doing so, the RPC must consider whether the development will favorably or adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment.[15]

Other appropriate agencies may also review the proposed development and prepare reports and recommendations on issues within their jurisdiction. These reports become part of the RPC's report, but the RPC may attach dissenting views.[16] When water management district and Department of Environmental Protection permits have been issued pursuant to ch. 373, F.S., or ch. 403, F.S., the RPC may comment on the regional implications of the permits but may not offer conflicting recommendations.[17]

The DEO also reviews DRIs for compliance with state laws and to identify regional and state impacts and to make recommendations to local governments for approving, not approving, or suggesting mitigation conditions.[18] Rule 73C-40, F.A.C., provides the rules of procedure and practice pertaining to DRIs. These rules provide detailed guidelines for how the state land planning agency evaluates the development's impact on:

- Hurricane preparedness;[19]
- Conservation of listed plant and wildlife resources;[20]
- Treatment of archaeological and historical resources;[21]
- Hazardous material usage, potable water, wastewater, and solid waste facilities;[22]
- Transportation;[23]
- Air quality;[24] and

[13] Section 380.06(12), F.S.
[14] Rule 73C-40.024, F.A.C., states in part: "In preparing the regional report, the regional planning agency shall identify and make recommendations on regional issues. Regional issues to be used in reviewing DRI applications are included in the applicable local government comprehensive plans, the Development of Regional Impact Uniform Standards Rule, the State Comprehensive Plan, and Sections 380.06(12)(a)1., 2., and 3., Florida Statutes. In addition, Strategic Regional Policy Plans adopted by regional planning councils pursuant to Sections 186.507 and .508, Florida Statutes, are a long-range policy guide for the development of the region and shall be used as the basis for regional review of DRIs. The regional planning agency may also identify and make recommendations on other local issues. However, local issues shall not be grounds for or be included as issues in a regional planning agency recommendation for appeal of a local government development order."
[15] Section 380.06(12)(a), F.S.
[16] Section 380.06(12)(b), F.S.
[17] *Id*.
[18] *See* Senate Interim Report 2012-114, *The Development of Regional Impact Process*, Sep. 2011.
[19] Rule 73C-40.0256, F.A.C.
[20] Rule 73C-40.041, F.A.C.
[21] Rule 73C-40.043, F.A.C.
[22] Rule 73C-40.044, F.A.C.
[23] Rule 73C-40.045, F.A.C.
[24] Rule 73C-40.046, F.A.C.

- Adequate housing.[25]

At the local public hearing on the proposed DRI, concurrent comprehensive plan amendments associated with the proposed DRI must be heard as well. When considering whether the development must be approved, denied, or approved subject to conditions, restrictions, or limitations, the local government considers the extent to which the development is consistent with:

- Its comprehensive plan and land development regulations;
- The report and recommendations of the RPC; and
- The state comprehensive plan.[26]

Local governments are required by s. 163.3177(6)(f), F.S., to adopt a housing element in the local comprehensive plan that expresses principles, guidelines, standards, and strategies related to affordable housing for all current and anticipated future residents.

The local government must render a decision on an application for development within 30 days after the public hearing on the development. Within 45 days after a development order is rendered, the owner or developer of the property or the DEO may appeal the order to the Governor and Cabinet, sitting as the Florida Land and Water Adjudicatory Commission.[27] An "aggrieved or adversely affected party" may appeal and challenge the consistency of a development order with the local comprehensive plan.[28]

Aggregation

The Florida Statutes provide that the impacts of two or more purportedly separate developments that nonetheless share a unified plan of development should be aggregated during the DRI designation process.[29] The criteria for identifying projects subject to aggregation include whether:

- The same person owns or controls the developments;
- Common management exists controlling the form of physical development or disposition of the parcels of the developments;
- A reasonable closeness in time exists between the completion of 80 percent of one development and submission of the master plan for the other development;
- A master plan or series of plans or drawings exists that covers the developments; and
- A common advertising scheme or promotional plan is in effect for the developments.

Substantial Deviations

DRIs are designed to be built out over many years, which increases the likelihood that changes to the development will be necessary due to changing market conditions or other reasons. When a developer proposes a change to a previously approved development that creates a reasonable

[25] Rule 73C-40.048, F.A.C.
[26] Section 380.06(13), F.S. DRIs located in areas of critical state concern (ACSC) must also comply with the land development regulations in s. 380.05, F.S.
[27] Section 380.07(2), F.S.
[28] Section 163.3215, F.S.
[29] Section 380.0651(4), F.S.

likelihood of either additional regional impact or a regional impact not previously reviewed by the RPC, a substantial deviation exists and the proposed change is subject to further DRI review. If a change qualifies as a substantial deviation and there is no exemption, a notice of proposed change must be made to the RPC and the DEO.[30] The notice must include a description of previous individual changes made to the development, including changes previously approved by the local government, and must include appropriate amendments to the development order.[31]

Section 380.06(19), F.S., provides the specific criteria which constitute a substantial deviation and require a development to be subject to additional review.[32] The numerical standards are also automatically increased if a project is job-creating or located wholly within an urban infill and redevelopment area. During the 2011 Session, the Legislature increased the substantial deviation standards by approximately 50 percent for attraction or recreational facilities, office development, and commercial development.[33] Section 380.06(19), F.S., also specifies changes that individually or cumulatively with any previous changes are not substantial deviations.

DRI Exemptions

The Legislature has exempted many types of development from DRI review.[34] The Legislature has also exempted projects from DRI review within certain counties and municipalities that qualify as a DULA.[35] Currently, eight counties and 242 cities meet, or have met, the population and density criteria necessary to qualify as a DULA.[36] The exemption for projects within a DULA reflects state policy to encourage development within urban areas, the increased sophistication of local planning staffs and the progress that larger, urban counties and municipalities have made in the area of large-scale land use planning since the DRI program was instituted in 1972. Additionally, the Legislature has provided two alternative large-scale planning tools known as the sector plan[37] and rural land stewardship program.[38] Large scale projects within a sector plan or rural land stewardship area are exempt from DRI review.

[30] Section 380.06(19)(e)1., F.S.
[31] *Id*.
[32] Among the changes that constitute a substantial deviation include a decrease in the area set aside for open space of 5 percent or 20 acres, whichever is less (s. 380.06(19)(b)8., F.S.); a 15 percent increase in the number of external vehicle trips generated by the development above that which was projected during the original DRI review (s. 380.06(19)(b)10., F.S.); and any change which would result in development of any area which was specifically set aside in the application for development approval or in the development order for preservation or special protection of endangered or threatened plants or animals designated as endangered, threatened, or species of special concern and their habitat, any species protected by 16 U.S.C. ss. 668a-668d, primary dunes, or archaeological and historical sites designated as significant by the Division of Historical Resources of the Department of State (s. 380.06(19)(b)11., F.S.).
[33] Ch. 2011-139, L.O.F.; HB 7207 (2011).
[34] *See* s.380.06(24), F.S.; ch. 2011-139, L.O.F., exempted from DRI review- movie theaters; industrial plants, industrial parks, and distribution, warehousing or wholesaling facilities; and hotel or motel development.
[35] Section 380.06(29), F.S. (see section Dense Urban Land Areas).
[36] The following counties currently qualify as a DULA: Broward, Duval, Hillsborough, Miami-Dade, Orange, Palm Beach, Pinellas, and Seminole. For a complete list of municipalities qualifying as a DULA see http://edr.state.fl.us/Content/local-government/reports/DULA-21June2013.pdf (last accessed January 2, 2014).
[37] Section 163.3245, F.S.
[38] Section 163.3248, F.S.

Dense Urban Land Areas

Under current law the following are exempt from DRI review as DULAs:

- Any proposed development in a municipality that has an average of at least 1,000 people per square mile of land area and a minimum total population of at least 5,000;
- Any proposed development within a county, including the municipalities located in the county, that has an average of at least 1,000 people per square mile of land area and is located within an urban service area as defined in s. 163.3164, F.S., which has been adopted into the comprehensive plan;
- Any proposed development within a county, including the municipalities located therein, which has a population of at least 900,000, that has an average of at least 1,000 people per square mile of land area, but which does not have an urban service area designated in the comprehensive plan; or
- Any proposed development within a county, including the municipalities located therein, which has a population of at least 1 million and is located within an urban service area as defined in s. 163.3164, F.S., which has been adopted into the comprehensive plan.[39]

The Florida Legislature's Office of Economic and Demographic Research (EDR) annually calculates the population and density criteria needed to determine which jurisdictions meet the density criteria to be a DULA by using the most recent land area data from the decennial census conducted by the Bureau of the Census of the United States Department of Commerce and the latest available population estimates. The EDR submits a list of jurisdictions which meet the total population and density criteria to the DEO.[40]

Intergovernmental Coordination Element

Local comprehensive plans are required to have an intergovernmental coordination element,[41] and local governments are authorized to enter into intergovernmental agreements on how to handle the impacts of development. The intergovernmental coordination element must demonstrate consideration of the particular effects of the local plan upon the development of adjacent cities and counties, the region, or upon the state comprehensive plan.[42] The element must provide procedures for identifying and implementing joint planning areas, especially for the purpose of annexation, municipal incorporation, and joint infrastructure service areas. Local governments must include mechanisms that address the impacts of development proposed in the local comprehensive plan upon development in adjacent jurisdictions.[43] The element must also ensure coordination in establishing level of service standards for public facilities with any state, regional, or local entity having operational and maintenance responsibility for such facilities.

The intergovernmental coordination element must provide for a dispute resolution process designed by the RPC for bringing intergovernmental disputes to closure in a timely manner. The statutory criteria require the dispute resolution process to provide for: voluntary meetings among the disputing parties; if those meetings fail to resolve the dispute, initiation of mandatory

[39] Section 380.24(a), F.S.
[40] *Id.*
[41] Section 163.3177(6)(h), F.S.
[42] Section 163.3177(6)(h)1., F.S.
[43] Section 163.3177(6)(h)3.a., F.S.

mediation or a similar process; if that process fails, initiation of arbitration or administrative or judicial action, where appropriate.[44]

III. Effect of Proposed Changes:

Section 1 amends s. 380.06(29), F.S., and deletes two criteria for the DULA exemption:

- Any proposed development within a county, including the municipalities located in the county that has an average of at least 1,000 people per square mile of land area and is located within an urban service area.
- Any proposed development within a county, including the municipalities located therein, which has a population of at least 900,000, that has an average of at least 1,000 people per square mile of land area, but which does not have an urban service area designated in the comprehensive plan.

In addition, the bill expands the DULA exemption applicable to a development which is located in a county with a population of 1 million and is located in an urban service area adopted into a comprehensive plan so that the exemption would apply to any proposed development in within a county that has a population of at least 300,000 and an average population of at least 400 people per square mile. The bill eliminates the urban service area designation as a criteria of the DULA exemption, with the exception of a county with a population of at least 1 million which has approved, by countywide election, a charter provision requiring an affirmative vote of more than a simple majority to extend the urban service area. In such a county, the DULA DRI exemption only applies within an urban service area that has been adopted into the comprehensive plan.

Currently, eight counties and 242 municipalities satisfy the criteria for the DULA exemption. The bill would add seven additional counties and 20 additional municipalities.[45]

The bill also exempts any development that qualifies for an exemption from the DRI review under s. 380.06(29)(a), F.S., from the DRI aggregation criteria.

The bill also makes a technical change to the name of the United States Census Bureau.

Section 2 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[44] Section 186.509, F.S.

[45] The seven additional counties are: Brevard, Escambia, Lee, Manatee, Pasco, Sarasota, and Volusia.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 372 may reduce costs associated with the DRI review process for developers who wish to pursue development projects in a county or municipality that is newly designated as a DULA.

C. Government Sector Impact:

The impact on state and local governments is indeterminate, but expected to be insignificant. Increasing the number of local governments who are exempt from the DRI review process may reduce the workload of the DEO's staff and the staffs of local governments who review these projects.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 380.06 of the Florida Statutes.

IX. Additional Information:

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

CS by Appropriations on March 27, 2014:
The Committee Substitute:

- Limits the exemption from the DRI aggregation criteria set forth in s. 380.0651(4), F.S., to those developments that are exempt from DRI review because they are located in a DULA.
- Allows a county with a population of at least 1 million which has approved, by countywide election, a charter provision requiring an affirmative vote of more than a simple majority to extend the urban service area to limit the DULA DRI exemption to the urban service area that has been adopted into the comprehensive plan.

- Exempts any development that qualifies for an exemption under s. 380.06, F.S., from the DRI aggregation criteria set forth in s. 380.0651(4), F.S.

B. Amendments:

None.

By the Committee on Appropriations; and Senator Galvano

576-03299-14 2014372c1

A bill to be entitled

An act relating to developments of regional impact; amending s. 380.06, F.S.; deleting certain exemptions for dense urban land areas; revising the exemption for any proposed development within a county that has a population of at least 300,000 and an average population of at least 400 people per square mile; exempting certain developments from certain statewide standards and guidelines; providing an effective date.

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

Section 1. Paragraph (a) of subsection (29) of section 380.06, Florida Statutes, is amended to read:

380.06 Developments of regional impact.—

(29) EXEMPTIONS FOR DENSE URBAN LAND AREAS.—

(a) The following are exempt from this section:

1. Any proposed development in a municipality that has an average of at least 1,000 people per square mile of land area and a ~~minimum~~ total population of at least 5,000; or

~~2. Any proposed development within a county, including the municipalities located in the county, that has an average of at least 1,000 people per square mile of land area and is located within an urban service area as defined in s. 163.3164 which has been adopted into the comprehensive plan;~~

~~3. Any proposed development within a county, including the municipalities located therein, which has a population of at least 900,000, that has an average of at least 1,000 people per square mile of land area, but which does not have an urban~~

576-03299-14 2014372c1

~~service area designated in the comprehensive plan; or~~

2.~~4.~~ Any proposed development within a county, including the municipalities located therein, which has an average population of at least 400 people per square mile and a population of at least 300,000, provided, however, that in a county with a population of at least 1 million which has approved, by countywide election, a charter provision requiring an affirmative vote of more than a simple majority to extend the urban service area, the exemption shall only apply ~~and is located~~ within an urban service area as defined in s. 163.3164 which has been adopted into the comprehensive plan.

The Office of Economic and Demographic Research within the Legislature shall annually calculate the population and density criteria needed to determine which jurisdictions meet the density criteria in subparagraphs 1. and 2. ~~1.-4.~~ by using the most recent land area data from the decennial census conducted by the United States Census Bureau ~~of the Census~~ of the United States Department of Commerce and the latest available population estimates determined pursuant to s. 186.901. If any local government has had an annexation, contraction, or new incorporation, the office ~~of Economic and Demographic Research~~ shall determine the population density using the new jurisdictional boundaries ~~as~~ recorded in accordance with s. 171.091. The office ~~of Economic and Demographic Research~~ shall annually submit to the state land planning agency by July 1 a list of jurisdictions that meet the total population and density criteria. The state land planning agency shall publish the list ~~of jurisdictions~~ on its Internet website within 7 days after the

list is received. The designation of jurisdictions that meet the criteria of subparagraphs 1. and 2. ~~1.-4.~~ is effective upon publication on the state land planning agency's Internet website. If a municipality that has previously met the criteria no longer meets the criteria, the state land planning agency shall maintain the municipality on the list and indicate the year the jurisdiction last met the criteria. However, any proposed development of regional impact not within the established boundaries of a municipality at the time the municipality last met the criteria must meet the requirements of this section until such time as the municipality as a whole meets the criteria. Any county that meets the criteria shall remain on the list in accordance with ~~the provisions of~~ this paragraph. Any jurisdiction that was placed on the dense urban land area list before June 2, 2011, shall remain on the list in accordance with ~~the provisions of~~ this paragraph.

3. A development that qualifies for an exemption under this paragraph is not subject to s. 380.0651(4).

Section 2. This act shall take effect July 1, 2014.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 1046
INTRODUCER:	Senator Galvano
SUBJECT:	Public Records/Motor Vehicle Crash Reports
DATE:	April 17, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Everette	Eichin	TR	**Favorable**
2.	Kim	McVaney	GO	**Favorable**
3.	Everette	Phelps	RC	**Pre-meeting**

I. Summary:

SB 1046 expands a public record exemption restricting access to certain personal information contained in traffic crash reports obtained by the media.

Current law allows radio and television stations licensed by the Federal Communication Commission, newspapers qualified to publish legal notices, and certain free newspapers to request information contained in traffic crash reports. The bill requires and clarifies that these outlets may continue to makes requests of traffic crash reports. However, for a period of 60 days after a report is filed, a crash reports must be requested on an individual basis, and may not contain home, cellular, employment, or other telephone numbers, or the home or employment addresses of any of the parties involved in the crash.

The exemption is subject to repeal on October 2, 2019 unless reviewed and reenacted. Also provided is a statement of public necessity as required by the Florida Constitution.

This bill expands an existing public records exemption and requires a two-thirds vote of the Legislature for passage.

II. Present Situation:

PIP Fraud

In a statewide Grand Jury report on insurance fraud relating to PIP coverage, the Fifteenth Statewide Grand Jury found that individuals called “runners” would pick up copies of crash reports filed with law enforcement agencies. The reports would then be used to solicit people involved in motor vehicle accidents. The Grand Jury found a strong correlation between illegal

solicitations and the commission of a variety of frauds, including insurance fraud. These runners generally work for attorneys, auto body shops, or health care professionals.[1]

According to the Grand Jury report:

> Probably the single biggest factor contributing to the high level of illegal solicitations is the ready access to public accident reports in bulk by runners. These reports provide runners, and the lawyers and medical professionals who use them, the ability to contact large numbers of potential clients at little cost and with almost no effort. As a result, virtually anyone involved in a car accident in Florida is fair game to the intrusive and harassing tactics of solicitors. Such conduct can be emotionally, physically, and ultimately, financially destructive.
>
> …..
>
> Some runners attempt to disguise their use of these police reports by claiming they would be used to publish what they called "transportation news" or "accident journals." These periodicals are nothing more than flimsy two or three page copies of a list of the names, addresses and phone numbers of accident victims, which information is summarized from the police reports. These "journals" are then sold at high prices to chiropractors, lawyers, auto body shops and even other solicitors for the specific purpose of soliciting the accident victims. This easy access to these reports so soon after the accident gives unscrupulous individuals an opportunity to directly contact victims of accidents with specific information about their accident.[2]

Crash Reports

Currently, s. 316.066(2)(a), F.S., provides that crash reports revealing identity, home or employment telephone number or home or employment address of, or other personal information concerning the parties involved in the crash are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution for a period of 60 days after the date the report is filed.

Closing access to crash reports for 60 days helps protect crash victims and their families from illegal personal injury protection (PIP) solicitation.

The law also provides several exceptions to this public records exemption. Crash reports may be made immediately available to parties involved in the crash, their legal representatives, their licensed insurance agents, their insurers or insurers to which they have applied for coverage, persons under contract with such insurers to provide claims or underwriting information, prosecutorial authorities, law enforcement agencies, the Department of Transportation, county traffic operations, victim services programs, radio and television stations licensed by the Federal Communications Commission, newspapers qualified to publish legal notices under ss. 50.11 and

[1] The Office of the Attorney General, Statewide Grand Jury Report, Second Interim Report of the Fifteenth Statewide Grand Jury, No. 95,746. (Fla. 2000). This document can be viewed at: http://myfloridalegal.com/pages.nsf/4492d797dc0bd92f85256cb80055fb97/9ab243305303a0e085256cca005b8e2e!opendocument (Last viewed March 27, 2014).
[2] *Id*.

50.031, F.S., and free newspapers of general circulation, published once a week or more often, available and of interest to the public generally for the dissemination of news.[3]

The exemption does not prevent state and federal government agencies acting in furtherance of their duties from having access to information in crash reports.[4]

A person attempting to access a crash report within 60 days after the date the report is filed must present identification and file a written sworn statement stating that confidential and exempt information contained in a crash report will not be used for commercial solicitation of accident victims, or knowingly disclosed to any third party during the time that information remains confidential and exempt.

In lieu of requiring a written sworn statement, an agency may provide crash reports by electronic means to third-party vendors under contract with one or more insurers, but only when such contract states that information from a crash report made confidential and exempt will not be used for commercial solicitation of accident victims by the vendors, or knowingly disclosed by the vendors to any third party for the purpose of such solicitation, during the period of time the information remains confidential and exempt. The vendor must provide a copy of the contract to the agency.[5]

The law does not prevent the dissemination or publication of news to the general public by any legitimate media entitled to access confidential and exempt information.[6]

Criminal Penalties for Illegal Use of Crash Report Information:

Current law provides criminal penalties for malfeasant use of crash reports.

- Section 316.066(3)(c), F.S., provides that anyone, knowing that he or she is not entitled to obtain confidential and exempt information in a crash report, who obtains or attempts to obtain such information commits a third degree felony.
- Section 316.066(3)(d), F.S., provides that anyone who knowingly uses confidential and exempt information in a crash report in violation of a filed written sworn statement or contractual agreement commits a third degree felony.
- Section 817.234(8), F.S., prohibits anyone from soliciting business for the purpose of filing a motor vehicle tort claim, or claims for PIP benefits. Violations of this statute are a third degree felony.[7]
- Section 817.505, F.S., prohibits anyone from paying, directly or indirectly to induce the referral of patients from a health care provider or facility, or to solicit any kind of payment

[3] Section 316.066(2)(b), F.S. This section also provides that "the following products or publications are not newspapers as referred to in this section: those intended primarily for members of a particular profession or occupational group; those with the primary purpose of distributing advertising; and those with the primary purpose of publishing names and other personal identifying information concerning parties to motor vehicle crashes."
[4] Section 316.066(2)(c), F.S.
[5] Section 316.066(2)(d), F.S.
[6] Section 316.066(2)(e), F.S.
[7] Section 817.234(c), F.S.

directly or indirectly in return for referring a patient to a health care provider or facility. Violations of this statute are a third degree felony.[8]

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.[9] The records of the legislative, executive, and judicial branches are specifically included.[10]

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act[11] guarantees every person's right to inspect and copy any state or local government public record[12] at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[13]

Only the Legislature may create an exemption to public records requirements.[14] Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.[15] 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 provisions[16] and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[17]

[8] Section 817.505(4), F.S.
[9] FLA CONST., art. I, s. 24(a).
[10] Id.
[11] Chapter 119, F.S.
[12] 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)).
[13] Section 119.07(1)(a), F.S.
[14] 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 (s*ee 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).
[15] FLA. CONST., art. I, s. 24(c).
[16] The bill may, however, contain multiple exemptions that relate to one subject.
[17] FLA. CONST., art. I, s. 24(c).

General Public Records Exemption for Victims of Crimes and Accidents

There is a general public records exemption for police reports protecting victims of crimes and accidents. This law provides that no one may use confidential or exempt information contained in accident reports to solicit victims or disclose that information to a third party who would solicit victims while records are confidential or exempt.[18] This prohibition does not apply to publication by the media.[19]

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act), s. 119.15, F.S., prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.[20] 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.[21] 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.

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.[22] 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.[23]

The Act also requires specified questions to be considered during the review process.[24]

[18] Section. 119.105, F.S.
[19] Section. 119.105, F.S.
[20] 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.).
[21] Section 119.15(3), F.S.
[22] Section 119.15(6)(b), F.S.
[23] *Id*.
[24] Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?

If, in reenacting an exemption that will repeal, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.[25] If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created, then a public necessity statement and a two-thirds vote for passage are *not* required.

III. Effect of Proposed Changes:

Section 1 amends the current public records exemption for crash reports by prohibiting radio and television stations, and newspapers qualified to publish legal notices, and certain free newspapers from obtaining the personal and work addresses and phone numbers of individuals involved in an accident. The media will not have access to this information for 60 days. The identities of the individuals in a crash report are not included in this exemption and remain accessible to the media.

In addition, traffic crash report requests must be filed on an individual basis. This measure would eliminate bulk public records requests being made for crash reports.

Under the bill, this public records exemption is subject to repeal on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 provides that personal contact information contained in a motor vehicle crash report be exempt from public records disclosure. It is public necessity that personal information by radio, television stations, and newspapers be restricted for the 60-day period after the filing date of traffic crash reports. The restriction is to combat widespread insurance fraud that occurs when information is unlawfully used to contact the parties involved in a crash. Moreover, the exemption prohibits the media's access to addresses and telephone numbers of the parties involved in crashes in order to protect the parties from those who would unlawfully solicit and make claims against their personal injury protection insurance policies.

This act shall take effect on the same date that CS/SB 876 or HB 865 or similar legislation is adopted in the same legislative session or an extension thereof and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

[25] FLA. CONST., art. I, s. 24(c). An existing exemption may be treated as a new exemption if the exemption is expanded to cover additional records (s. 119.15(4), F.S.).

B. Public Records/Open Meetings Issues:

Vote Requirement

Section 24(c), Art. I of the Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for passage of a newly created or expanded public records or public meetings exemption. Because this bill substantially amends an exception to the current public records exemption, it expands the exemption and therefore it requires a two-third vote for passage.

Public Necessity Statement

Section 24(c), Art. I of the Florida Constitution requires a public necessity statement for a newly created or expanded public records or public meetings exemption. Because this bill expands an existing public records exemption, 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:

None.

VI. Technical Deficiencies:

The last paragraph in s. 316.066(2), F.S., and CS/SB 876 (which amends s. 316.066(2), F.S.) is paragraph "(e)." This bill is currently drafted to create s. 316.066(2)(g) and will have to be amended to become s. 316.066(2)(f).

The public necessity statement appears to be facially constitutional, in that the public necessity statement justifies, with specificity, the necessity for the exemption and the exemption is no broader that is than is necessary to accomplish its purpose.[26] The public necessity statement provides that this exemption is necessary in order to protect the public from insurance fraud and

[26] Article 1, Section 24, of the Florida Constitution provides in pertinent part:
The legislature, however, may provide by general law passed by a two-thirds vote of each house for the exemption of records from the requirements of subsection (a) and the exemption of meetings from the requirements of subsection (b), provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law.

illicit solicitations, thus implying that unscrupulous actors are using lawful media access for illicit purposes. It is unclear if the public necessity statement is not legally sufficient because it does not explicitly articulate the nexus between the media's lawful access to information in crash reports and the unlawful use of confidential and exempt information by unscrupulous actors.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 316.066 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

596104

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Rules (Galvano) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (b) of subsection (2) of section 316.066, Florida Statutes, is amended to read:

316.066 Written reports of crashes.—

(2)

(b) Crash reports held by an agency under paragraph (a) may be made immediately available to the parties involved in the crash, their legal representatives, their licensed insurance

596104

agents, and their insurers or insurers to which they have applied for coverage;~~,~~ persons under contract with such insurers to provide claims or underwriting information;~~,~~ prosecutorial authorities;~~,~~ law enforcement agencies;~~,~~ the Department of Transportation;~~,~~ county traffic operations;~~,~~ victim services programs;~~,~~ radio and television stations licensed by the Federal Communications Commission;~~,~~ newspapers qualified to publish legal notices under ss. 50.011 and 50.031;~~,~~ and free newspapers that are published on a weekly or daily basis, that have a minimum of 5,000 copies distributed by mail or by carrier as verified by a postal statement, by a notarized printer's statement of press run, or by industry-accepted auditors such as the Alliance for Audited Media, the Certified Audit of Circulations, or the Circulation Verification Council, and that have the intention of being of general distribution and circulation and that contain news of general interest with a minimum of four pages per publication ~~of general circulation, published once a week or more often, available and of interest to the public generally for the dissemination of news~~. For the purposes of this section, the following products or publications are not newspapers as referred to in this section: those intended primarily for members of a particular profession or occupational group; those with the primary purpose of distributing advertising; and those with the primary purpose of publishing names and other personal identifying information concerning parties to motor vehicle crashes.

Section 2. The Legislature finds that a crash report that reveals the identity, home or employment telephone number, or home or employment address of a party involved in a crash, or

596104

other personal information concerning a party involved in the crash, and that is held by an agency that regularly receives or prepares information from or concerning the parties to motor vehicle crashes is confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for 60 days after the date the report is filed. Public access to such information during that 60-day period by free newspapers published on a weekly or daily basis with a minimum of 5,000 copies distributed by mail or by carrier and having the intention of being of general distribution and circulation and containing news of general interest with a minimum of four pages per publication, should be restricted. The restricted access to personal information in a crash report helps prevent widespread insurance fraud that may occur when information is obtained by runners and websites claiming to be free newspapers in order to obtain information concerning parties involved in a crash and to use this information to contact the parties. The exemption from public records requirements protects the parties involved in a crash from those who would unlawfully solicit personal injury protection insurance claims. Accordingly, the Legislature finds that the harm to parties involved in a crash which could result from the release of personal information outweighs any minimal public benefit that would be derived from disclosure of that information to those claiming to be free newspapers that illegally compile victim identities. Therefore, it is the finding of the Legislature that such information must be made exempt from public disclosure.

Section 3. This act shall take effect on the same date that

596104

SB 876 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to public records; amending 316.066, F.S.; requiring that crash reports be made available to certain newspapers; providing a statement of public necessity; providing a contingent effective date.

585894

LEGISLATIVE ACTION

Senate . House

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The Committee on Rules (Galvano) recommended the following:

Senate Amendment

Delete lines 12 - 45
and insert:
Section 1. Paragraph (f) is added to subsection (2) of section 316.066, Florida Statutes, to read:
316.066 Written reports of crashes.—
(2)
(f) Radio and television stations licensed by the Federal Communications Commission, newspapers qualified to publish legal notices under ss. 50.011 and 50.031, and free newspapers of

585894

general circulation published once a week or more often, available and of interest to the public generally for the dissemination of news, which request crash reports before 60 days have elapsed after the report is filed must request such crash reports on an individual basis and may not have access to the home, cellular, employment, or other telephone number or the home or employment address of any of the parties involved in the crash. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that a crash report that reveals the identity, home or employment telephone number, or home or employment address of, or other personal information concerning, a party involved in the crash and that is held by an agency that regularly receives or prepares information from or concerning the parties to motor vehicle crashes is confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for 60 days after the date that the report is filed. Public access to such information during that 60-day period by radio and television stations licensed by the Federal Communications Commission, newspapers qualified to publish legal notices under ss. 50.011 and 50.031, Florida Statutes, and free newspapers of general circulation published once a week or more often, available and of interest to the public generally for the dissemination of news, should be restricted to combat widespread insurance fraud that occurs when the information is unlawfully used to contact the parties involved in a crash. The exemption protects the parties involved

585894

in a crash from those who would unlawfully solicit personal injury protection insurance claims. Accordingly, the Legislature finds that the harm to parties involved in a crash which could result from the release of such information outweighs any minimal public benefit that would be derived from disclosure of that information to the public. Therefore, it is the finding of the Legislature that such information must be made exempt from public disclosure.

By Senator Galvano

26-01759-14 20141046__

A bill to be entitled

An act relating to public records; amending s. 316.066, F.S.; providing an exemption from public records requirements for certain personal contact information contained in motor vehicle crash reports; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Paragraph (g) is added to subsection (2) of section 316.066, Florida Statutes, as amended by SB 876, 2014 Regular Session, to read:

316.066 Written reports of crashes.—

(2)

(g) Radio and television stations licensed by the Federal Communications Commission, newspapers qualified to publish legal notices under ss. 50.011 and 50.031, and free newspapers of general circulation published once a week or more often, available and of interest to the public generally for the dissemination of news, which request crash reports before 60 days have elapsed after the report is filed must request such crash reports on an individual basis and may not have access to the home, cellular, employment, or other telephone number or the home or employment address of any of the parties involved in the crash. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal

26-01759-14 20141046__

through reenactment by the Legislature.

Section 2. The Legislature finds that the personal contact information contained in a motor vehicle crash report is confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for 60 days after the report is filed and that it is a public necessity that access to such information during that 60-day period by newspapers and radio and television stations be restricted to combat widespread insurance fraud that occurs when the information is unlawfully used to contact the parties involved in a crash. The exemption prohibits access by newspapers and television and radio stations to the addresses and telephone numbers of the parties involved in a crash to protect the parties from those who would unlawfully solicit the parties to make claims against their personal injury protection insurance policies.

Section 3. This act shall take effect on the same date that SB 876 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

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

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 834
INTRODUCER:	Governmental Oversight and Accountability Committee and Senator Latvala
SUBJECT:	Legal Notices
DATE:	April 17, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kim	McVaney	GO	**Fav/CS**
2.	Davis	Cibula	JU	**Favorable**
3.	Carey	Kynoch	AP	**Favorable**
4.	Kim	Phelps	RC	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 834 ensures that access to legal notices is free and more user friendly. A newspaper's legal notice webpage must be clearly titled, accessible for free, and may not require registration. The statewide website for legal notices, which is maintained by the Florida Press Association, must also be accessible for free, searchable by case name and number, and keep legal notices on-line for at least 90 consecutive days. This bill repeals a provision which states that an error in a legal notice appearing on a newspaper's website or on the statewide website is harmless if the legal notice was correctly published in the print version of the newspaper.

II. Present Situation:

Publication of Legal Notices

The publication of legal notices in newspapers is a long established practice. Legal notices and publication in newspapers occur for a variety of cases, such as when the government is proposing

to take an action[1] or when a plaintiff is not able to personally serve a defendant.[2] In most civil cases in which service may be accomplished by publication, notice must be published in a newspaper in the county where the lawsuit is filed once a week for 4 consecutive weeks.[3] Foreclosure proceedings are published once a week for 2 weeks.[4]

Publication Requirements

The requirements for legal publication are located in ch. 50, F.S. The law requires that publication be in a newspaper that is printed and published at least once a week and that contains at least 25 percent of its words in the English language.[5] The newspaper must qualify or be entered to qualify as a periodical at the post office in the county where it is published, and be generally available to the public for the purpose of publication of notices.[6] All official notices and legal advertisements must be charged and paid for on the basis of 6-point type on 6-point body, unless otherwise specified in statute.[7]

[1] There are many types of situations where legal notices are required, and the publication requirements for those situations are particular to each law. An example would be a judicial sale, when there is a court order or judgment for the sale of real or personal property, pursuant to ch. 45, F.S. Another example in s. 125.66, F.S., requires the board of county commissioners to publish in a newspaper a notice of intent to enact or amend ordinances at least 10 days before the meeting in which the ordinance may be enacted or amended.

[2] In general, laws addressing constructive service of process by publication are located in ch. 49, F.S. Section 49.011, F.S., provides that service of process by publication is permitted in the following types of cases:
(1) To enforce any legal or equitable lien or claim to any title or interest in real or personal property within the jurisdiction of the court or any fund held or debt owing by any party on whom process can be served within this state.
(2) To quiet title or remove any encumbrance, lien, or cloud on the title to any real or personal property within the jurisdiction of the court or any fund held or debt owing by any party on whom process can be served within this state.
(3) To partition real or personal property within the jurisdiction of the court.
(4) For dissolution or annulment of marriage.
(5) For the construction of any will, deed, contract, or other written instrument and for a judicial declaration or enforcement of any legal or equitable right, title, claim, lien, or interest thereunder.
(6) To reestablish a lost instrument or record which has or should have its situs within the jurisdiction of the court.
(7) In which a writ of replevin, garnishment, or attachment has been issued and executed.
(8) In which any other writ or process has been issued and executed which places any property, fund, or debt in the custody of a court.
(9) To revive a judgment by motion or scire facias.
(10) For adoption.
(11) In which personal service of process or notice is not required by the statutes or constitution of this state or by the Constitution of the United States.
(12) In probate or guardianship proceedings in which personal service of process or notice is not required by the statutes or constitution of this state or by the Constitution of the United States.
(13) For termination of parental rights pursuant to part VIII of ch. 39 or ch. 63.
(14) For temporary custody of a minor child, under ch. 751.
(15) To determine paternity, but only as to the legal father in a paternity action in which another man is alleged to be the biological father, in which case it is necessary to serve process on the legal father in order to establish paternity with regard to the alleged biological father.

[3] Section 49.10(1)(b), F.S.
[4] Section 49.10(1)(c), F.S.
[5] Section 50.011, F.S.
[6] Section 50.011, F.S.
[7] Section 50.061(6), F.S.

Publication Costs

The amount a newspaper can charge for publication is standardized at 70 cents per square inch for the first insertion, and 40 cents per square inch for each subsequent insertion.[8] Where the regular established minimum commercial rate per square inch of the newspaper publishing the official notice or legal advertisement is greater than the per square inch rate established in statute, the minimum commercial rate may be charged.[9] If the government is required to publish a notice multiple times, a newspaper may only charge 85 percent of the allowable rate for the subsequent publications.[10] The government may also procure publication through bids.[11]

Newspaper's Website

The law requires that the following legal actions must be published on a newspaper's website at the same time that they appear in print:

> constructive service, or the initiating, assuming, reviewing, exercising or enforcing jurisdiction or power, by any court in this state, or any notice of sale of property, real or personal, for taxes, state, county or municipal, or sheriff's, guardian's or administrator's or any sale made pursuant to any judicial order, decree or statute or any other publication or notice pertaining to any affairs of the state, or any county, municipality or other political subdivision thereof.[12]

Legal notices must be placed on a newspaper's website on the same day the notices appear in print, and the front page of a newspaper's website must have a link to the legal notices webpage.[13] The legal notices webpage must be searchable and accessible for free to the public.[14] If there are size requirements for a printed legal notice, then the newspaper's website is required to optimize online visibility of the legal notice; in addition, the legal notices must be the dominant feature of the webpage.[15] Effective July 1, 2013, newspapers are required to provide free e-mail notification of publication of new legal notices.[16]

Statewide Website

A newspaper is also required to place a legal notice published in its newspaper on a statewide website maintained by the Florida Press Association.[17] Finally, any error in the legal notice published on a newspaper's webpage or the statewide website is considered harmless if the legal notice printed in the newspaper is correct.[18]

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[8] Section 50.061(2), F.S.
[9] Section 50.061(3), F.S.
[10] Section 50.061(2), F.S.
[11] Section 50.061(4), F.S.
[12] Section 50.031, F.S.
[13] Section 50.0211(2), F.S.
[14] *Id*.
[15] *Id*.
[16] Section 50.0211(4), F.S.
[17] Section 50.0211(3), F.S. See www.floridapublicnotices.com.
[18] Section 50.0211(5), F.S.

III. Effect of Proposed Changes:

Newspaper Websites

Legal notices webpages for newspapers must be titled "Legal Notices," "Legal Advertising," or use similar language. The legal notices webpages must also be the "leading" as well as dominant subject of the page.

If the legal notice is published in a newspaper, the newspaper is prohibited from charging a fee or requiring a person to register with the newspaper in order to view or search a legal notice webpage.

Statewide Website

The statewide legal notice website must be accessible and searchable by name and case number and legal notices must be posted for at least 90 consecutive days. Effective October 1, 2014, the statewide website must keep a legal notice posted for 18 months, be searchable, and free to the public.

Conflicting Notices

The bill deletes s. 50.0211(5), F.S., which provides that an error in the internet version of a legal notice is harmless if the printed version is correct.[19]

Technical changes

Obsolete effective date clauses are removed from s. 50.0211, F.S., and editorial changes are made to ss. 50.0211 and 50.061, F.S.

Effective Date

The bill takes effect October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[19] Section 50.0211(5), F.S. provides that "[a]n error in the notice placed on the newspaper or statewide website shall be considered a harmless error and proper legal notice requirements shall be considered met if the notice published in the newspaper is correct."

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 834 prohibits newspapers and the Florida Press Association from charging fees for viewing legal notices on their websites. It is unknown if newspapers and the Florida Press Association are currently charging the public for viewing their legal notices websites and if this bill will reduce existing or potential revenue streams.

The Florida Press Association estimates that the initial cost associated with making changes to their website to conform to this bill is $3,600.00, but may increase. The Florida Press Association did not have an estimate for the financial impact this bill will have on newspapers, but did state that only a few newspapers would be affected.[20]

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Section 50.0211(5), F.S. provides that an error placed on the newspaper website or statewide website is considered a harmless error and proper legal notice requirements are considered to be met if the notice published in the newspaper is correct. This subsection is repealed by this bill. If an error occurs on either of those websites once this bill becomes law, it is not clear which published version will control, the printed newspaper version or the websites. It is also unclear if an ambiguity results from the error what redress is available for someone who relied upon the erroneous publication.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 50.0211 and 50.061.

[20] E-mail from Sam Morley, General Counsel for the Florida Press Association (March 26, 2014) (on file with the Senate Committee on Judiciary).

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on March 13, 2014:
The CS removes clauses which permit, but do not require, a clerk of court to link his or her website to a newspaper's legal notices website.

The CS also removes a provision stating that if there is a conflict between the electronic and the printed versions of a legal notice, the printed version controls. The CS also deletes a provision stating that a person adversely affected by a mistake in a judicial sale notice is permitted to seek relief if the error is in the printed legal notice or appears on the statewide website.

B. Amendments:

None.

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

585-02544-14 2014834c1

A bill to be entitled

An act relating to legal notices; amending s. 50.0211, F.S.; requiring legal notices to be posted on a newspaper's website on web pages with specified titles; prohibiting charging a fee or requiring registration for viewing online legal notices; establishing the period for which legal notices are required to be published on the statewide website; requiring that legal notices be archived on the statewide website for a specified period; deleting a provision relating to harmless error; amending s. 50.061, F.S.; clarifying payment provisions; providing an effective date.

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

Section 1. Section 50.0211, Florida Statutes, is amended to read:

50.0211 Internet website publication.—

(1) This section applies to legal notices that must be published in accordance with this chapter unless otherwise specified.

(2) Each legal notice must be posted ~~placed~~ on the newspaper's website on the same day that the printed notice appears in the newspaper, at no additional charge, in a separate web page titled "Legal Notices," "Legal Advertising," or comparable identifying language. A link to the legal notices web page shall be provided on the front page of the newspaper's website that provides access to the legal notices ~~without~~

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~~charge~~. If there is a specified size and placement required for a printed legal notice, the size and placement of the notice on the newspaper's website must ~~should~~ optimize its online visibility in keeping with the print requirements. The newspaper's web pages that contain legal notices must ~~shall~~ present the legal notices as the dominant and leading subject matter of those pages. The newspaper's website must ~~shall~~ contain a search function to facilitate searching the legal notices. A fee may not be charged, and registration may not be required, for viewing or searching legal notices on a newspaper's website if the legal notice is published in a newspaper ~~This subsection shall take effect July 1, 2013~~.

(3)(a) If a legal notice is published in a newspaper, the newspaper publishing the notice shall place the notice on the statewide website established and maintained as an initiative of the Florida Press Association as a repository for such notices located at the following address: www.floridapublicnotices.com.

(b) A legal notice placed on the statewide website created under this subsection must be:

1. Accessible and searchable by party name and case number.

2. Posted for a period of at least 90 consecutive days after the first day of posting.

(c) The statewide website created under this subsection shall maintain a searchable archive of all legal notices posted on the publicly accessible website on or after October 1, 2014, for 18 months after the first day of posting. Such searchable archive shall be provided and accessible to the general public without charge.

(4) Newspapers that publish legal notices shall, upon

request, provide e-mail notification of new legal notices when they are printed in the newspaper and added to the newspaper's website. Such e-mail notification shall be provided without charge, and notification for such an e-mail registry shall be available on the front page of the legal notices section of the newspaper's website. ~~This subsection shall take effect July 1, 2013.~~

~~(5) An error in the notice placed on the newspaper or statewide website shall be considered a harmless error and proper legal notice requirements shall be considered met if the notice published in the newspaper is correct.~~

Section 2. Subsections (2) and (3) of section 50.061, Florida Statutes, are amended to read:

50.061 Amounts chargeable.—

(2) The charge for publishing each such official public notice or legal advertisement shall be 70 cents per square inch for the first insertion and 40 cents per square inch for each subsequent insertion, except that government notices required to be published more than once, the cost of which ~~whose cost~~ is paid for by the government and not paid in advance by or allowed to be recouped from private parties, may not be charged for the second and successive insertions at a rate greater than 85 percent of the original rate.

(3) Where the regular established minimum commercial rate per square inch of the newspaper publishing such official public notices or legal advertisements is in excess of the rate herein stipulated, said minimum commercial rate per square inch may be charged for all such legal advertisements or official public notices for each insertion, except that government notices

required to be published more than once, the cost of which ~~whose cost~~ is paid for by the government and not paid in advance by or allowed to be recouped from private parties, may not be charged for the second and successive insertions at a rate greater than 85 percent of the original rate.

Section 3. This act shall take effect October 1, 2014.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 1320
INTRODUCER:	Governmental Oversight and Accountability Committee; Banking and Insurance Committee and Senator Richter
SUBJECT:	Public Records/Office of Financial Regulation
DATE:	April 17, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	**Fav/CS**
2.	Kim	McVaney	GO	**Fav/CS**
3.	Billmeier	Phelps	RC	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1320 creates a public records exemption for certain information held by the Office of Financial Regulation (OFR) relating to family trust companies, licensed family trust companies, and foreign licensed family trust companies. Linked bill CS/SB 1238 authorizes families to form and operate any of these three family trust companies, subject to regulatory requirements. A family trust company is an entity which provides trust services similar to those that can be provided by an individual or financial institution. This includes serving as a trustee of trusts held for the benefit of the family members as well as providing other fiduciary, investment advisory, wealth management, and administrative services to the family. A family trust company must be owned exclusively by family members and may not provide fiduciary services to the public.

This bill provides that the following records relating to family trust companies, licensed family trust companies, and foreign licensed family trust companies held by the OFR are confidential and exempt from public disclosure:

- Personal identifying information appearing in records relating to a registration, an application, or an annual certification.
- Personal identifying information appearing in records relating to an examination.
- Personal identifying information appearing in reports of examinations, operations, or conditions.
- Any portion of a list of names of the shareholders or members.

- Information received from a person from another state or nation or the federal government which is otherwise confidential.
- An emergency cease and desist order until it is made permanent or unless the public is at substantial risk of financial loss.

This bill creates a third degree felony for willfully disclosing information made confidential and exempt by this bill.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature pursuant to the Open Government Sunset Review Act. As this bill creates a new public records exemption, the bill also provides a statement of public necessity as required by the State Constitution.

The bill provides that the act shall take effect on the same date that CS/SB 1238 or similar legislation is adopted.

II. Present Situation:

Article I, s. 24(a) of the Florida Constitution provides:

> Every person has 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 persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Chapter 119, Florida Statutes, specifies conditions under which public access must be provided to records of an agency. Section 119.07(1)(a), F.S., states:

> Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Unless specifically exempted, all agency records are available for public inspection. The term "public record" is broadly defined 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.[1]

[1] Section 119.011(12), F.S.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.[2] All such materials are open for public inspection unless made exempt.[3]

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.[4] If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.[5]

Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption.[6] The exemption must be no broader than necessary to accomplish the stated purpose of the law.[7] A bill enacting an exemption may not contain other substantive provisions.[8]

Open Government Sunset Review Act

The Open Government Sunset Review Act[9] provides for the systematic review ending October 2 of the fifth year following enactment of an exemption from the Public Records Act or the Public Meetings Law. An exemption may be created, revised, or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.[10]

Family Trust Companies

CS/SB 1238 authorizes families to form and operate family trust companies, licensed family trust companies, and foreign licensed family trust companies (hereafter referred to collectively as "trust companies"). At least 14 other states currently have statutes governing the organization and operation of family trust companies. Florida law does not expressly authorize families to establish their own family trust companies. In general, a family trust company is an entity which provides trust services similar to those that can be provided by an individual or financial institution such as a bank or public trust company. This includes serving as a trustee of trusts held for the benefit of the family members, as well as providing other fiduciary, investment advisory, wealth management, and administrative services to the family.[11]

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[2] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).
[3] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).
[4] Florida Attorney General Opinion 85-62.
[5] *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So.2d 289 (Fla. 1991).
[6] *See* Fla. Const., art. I, s. 24(c).
[7] *See* Fla. Const., art. I, s. 24(c).
[8] *See* Fla. Const., art. I, s. 24(c).
[9] *See* s. 119.15, F.S.
[10] *See* s. 119.15(6)(b), F.S.
[11] *See* White Paper for SB 1238 by Senator Richter Relating to Family Trust Companies provided by the Real Property, Probate, and Trust Law Section of the Florida Bar (on file with the Senate Committee on Banking and Insurance).

III. Effect of Proposed Changes:

Section 1 of this bill, which is linked to the passage of CS/SB 1238 or similar legislation, provides that the following information in records relating to trust companies held by the OFR are confidential and exempt from public disclosure:

- Personal identifying information appearing in records relating to a registration, an application, or an annual certification.
- Personal identifying information appearing in records relating to an examination.
- Personal identifying information appearing in reports of examinations, operations, or conditions of trust companies. This encompasses all documents submitted to or prepared by the OFR.
- Personal identifying information appearing in working papers held by the OFR, including tests, investigations and audits.
- Any portion of a list of names of the shareholders or members.
- Information received from a person from another state or nation or the federal government which is otherwise confidential or exempt pursuant to the laws of that state or nation or pursuant to federal law.
- Emergency cease and desist orders. However, an emergency cease and desist order may be made public if it is made permanent or if continued confidentially will place the public at substantial risk of financial loss.

This bill provides that the OFR may disclose confidential and exempt information to the following:

- An authorized representative of a trust company during an examination.
- A fidelity insurance company, upon written consent of a trust company.
- An independent auditor, upon written consent of a trust company.
- A liquidator, receiver, or conservator for a trust company. However, any information which discloses the identity of a bondholder, customer, family member, member, or stockholder must be redacted by the OFR before being released.
- Any other state, federal, or foreign agency responsible for the regulation or supervision of a trust company.
- A law enforcement agency in the furtherance of the agency's official duties or for the purpose of reporting suspected criminal activity.
- A prosecutorial agency for the purpose of reporting suspected criminal activity.
- A legislative body or committee pursuant to a legislative subpoena. The legislative body or committee must maintain the confidentiality of the records it receives, except in cases involving a public official who is subject to impeachment of removal.

This bill does not prevent or restrict the publication of a report required by federal law, nor does this bill prevent or restrict the publication of a trust company's name, or the name and address of its registered agent.

This bill provides that a person who willfully discloses confidential and exempt information commits a third degree felony punishable by up to five years in prison, a $5,000.00 fine and subject to habitual offender laws.[12]

This bill provides that the public records exemption created by it is subject to the Open Government Sunset Review Act and is repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 of this bill provides the public necessity statement. The public necessity statement outlines two reasons for this public records exemption. First, family members, shareholders, and qualified participants of trust companies are targets of crime and making their identities public jeopardizes their financial and personal safety. Second, public disclosure of examinations, reports and emergency cease and desist orders could damage a family's reputation.

Section 3 of this bill provides that this bill is effective on the same date that CS/SB 1238, or similar legislation becomes effective.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

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. This bill requires a two-thirds vote.

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. This bill contains a public necessity statement.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[12] The bill provides that a person who willfully discloses confidential and exempt information will be punishable pursuant to ss. 775.082, 775.083 or 775.084, F.S.

B. Private Sector Impact:

This bill would protect some information relating to practices of family-owned businesses of high net worth families.

C. Government Sector Impact:

The OFR does not anticipate that answering public records requests will adversely impact its resources.[13]

The Department of Corrections estimates the addition of a new felony crime will have insignificant impact.[14]

VI. Technical Deficiencies:

None.

VII. Related Issues:

This bill also provides that records may be released to a liquidator, receiver, or conservator, however, this bill requires the OFR to redact information which discloses the identity of a bondholder, customer, family member, member or stockholder before releasing the information to the liquidator, receiver or conservator. The OFR stated that redacting the identifying information of these parties would be burdensome. More importantly, by removing information about a bondholder, customer, family member, member or stockholder from OFR's records, a receiver, liquidator or conservator would not be able to effectively perform his or her duties.[15]

VIII. Statutes Affected:

This bill creates section 662.148 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Governmental Oversight and Accountability on April 10, 2014:
This CS/CS makes the following changes:

- Consolidates definitions, public records exemptions and exceptions into a single section of law.
- Provides that personal identifying information are confidential and exempt in reports or records relating to registrations, applications, annual certifications, examinations, operations, conditions of trust companies.

[13] Office of Financial Regulation, SB 1320 Legislative Bill Analysis (March 14, 2014) at p. 5 (on file with the Senate Committee on Banking and Insurance).
[14] Department of Corrections, SB 1320 Legislative Bill Analysis, (March 5, 2014) at p. 2 (on file with the Senate Committee on Banking and Insurance).
[15] Office of Financial Regulation, SB 1320 Legislative Bill Analysis (March 14, 2014) at p. 5 (on file with the Senate Committee on Banking and Insurance).

- Adds a provision which makes permanent emergency cease and desist orders public record.
- Conforms the public necessity statement to the changes made in the CS/CS.

CS by Banking and Insurance on March 25, 2014:
The committee substitute removes provisions relating to the confidentiality of information in administrative and court proceedings.

B. Amendments:

None.

By the Committees on Governmental Oversight and Accountability; and Banking and Insurance; and Senator Richter

585-04184-14 20141320c2

A bill to be entitled

An act relating to public records; creating s. 662.148, F.S.; providing definitions; providing an exemption from public records requirements for certain information held by the Office of Financial Regulation relating to a family trust company, licensed family trust company, or foreign licensed family trust company; providing for the authorized release of certain information by the office; authorizing the publication of certain information; providing a penalty; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Section 662.148, Florida Statutes, is created and incorporated into chapter 662, Florida Statutes, as created by SB 1238, 2014 Regular Session, to read:

662.148 Public records exemption.—

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

(a) "Reports of examinations, operations, or conditions" means records submitted to or prepared by the office as part of the office's duties performed pursuant to s. 655.012 or s. 655.045(1).

(b) "Working papers" means the records of the procedure followed, the tests performed, the information obtained, and the conclusions reached in an examination under s. 655.032 or s.

585-04184-14 20141320c2

655.045. The term also includes books and records.

(2) PUBLIC RECORDS EXEMPTION.—The following information held by the office is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Any personal identifying information appearing in records relating to a registration, an application, or an annual certification of a family trust company, licensed family trust company, or foreign licensed family trust company.

(b) Any personal identifying information appearing in records relating to an examination of a family trust company, licensed family trust company, or foreign licensed family trust company.

(c) Any personal identifying information appearing in reports of examinations, operations, or conditions of a family trust company, licensed family trust company, or foreign licensed family trust company, including working papers.

(d) Any portion of a list of names of the shareholders or members of a family trust company, licensed family trust company, or foreign licensed family trust company.

(e) Information received by the office from a person from another state or nation or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or nation or pursuant to federal law.

(f) An emergency cease and desist order issued under s. 662.143 until the emergency order is made permanent unless the office finds that such confidentiality will result in substantial risk of financial loss to the public.

(3) AUTHORIZED RELEASE OF CONFIDENTIAL AND EXEMPT INFORMATION.—Information made confidential and exempt under

subsection (2) may be disclosed by the office:

(a) To the authorized representative or representatives of the family trust company, licensed family trust company, or foreign licensed family trust company under examination. The authorized representative or representatives shall be identified in a resolution or by written consent of the board of directors if the trust company is a corporation, or of the managers if the trust company is a limited liability company.

(b) To a fidelity insurance company, upon written consent of the trust company's board of directors if a corporation, or its managers if a limited liability company.

(c) To an independent auditor, upon written consent of the trust company's board of directors if a corporation, or its managers if a limited liability company.

(d) To a liquidator, receiver, or conservator for a family trust company, licensed family trust company, or foreign licensed family trust company if a liquidator, receiver, or conservator is appointed. However, any portion of the information which discloses the identity of a bondholder, customer, family member, member, or stockholder must be redacted by the office before releasing such portion to the liquidator, receiver, or conservator.

(e) To any other state, federal, or foreign agency responsible for the regulation or supervision of family trust companies, licensed family trust companies, or foreign licensed family trust companies.

(f) To a law enforcement agency in the furtherance of the agency's official duties and responsibilities.

(g) To the appropriate law enforcement or prosecutorial

agency for the purpose of reporting any suspected criminal activity.

(h) Pursuant to a legislative subpoena. A legislative body or committee that receives records or information pursuant to such a subpoena must maintain the confidential status of such records or information, except in a case involving the investigation of charges against a public official subject to impeachment or removal, in which case records or information shall only be disclosed to the extent necessary as determined by such legislative body or committee.

(4) PUBLICATION OF INFORMATION.—This section does not prevent or restrict the publication of:

(a) A report required by federal law.

(b) The name of the family trust company, licensed family trust company, or foreign licensed family trust company and the name and address of the registered agent of that company.

(5) PENALTY.—A person who willfully discloses information made confidential and exempt by this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and is repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that personal identifying information contained in records held by the Office of Financial Regulation which pertain to a family trust company, licensed family trust company, or foreign licensed family trust company relating to registration

or certification; an examination; reports of examinations, operations, or conditions, including working papers; any portion of a list of the names of shareholders or members; information received by the Office of Financial Regulation from a person from another state or nation or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that jurisdiction; or an emergency cease and desist order be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. This exemption is necessary because:

(1) Financial information and lists of names of family members, qualified participants, and shareholders, if available for public access could jeopardize the financial safety of the family members who are the subject of the information. Families with a high net worth are frequently the targets of criminal predators seeking access to their assets. It is important that the exposure of such families and family members to threats of extortion, kidnapping, and other crimes not be increased. Placing family names, private family business records and methodologies into the public domain would increase the security risk that a family could become the target of criminal activity.

(2) Public disclosure of an examination, report of examination, or emergency cease and desist order could expose families to security risks, and could defame or cause unwarranted damage to the good name or reputation of the family that is the subject of the information.

(3) Family trust companies often provide a consolidated structure for the ownership of an operating business owned by multiple family members. Placing those private business

operations and methods in the public domain could jeopardize their business assets, methodologies, and practices.

Section 3. This act shall take effect on the same date that SB 1238 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 1672
INTRODUCER:	Commerce and Tourism Committee and Banking and Insurance Committee
SUBJECT:	Property Insurance
DATE:	April 17, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Matiyow/Knudson	Knudson		**BI SPB 7062 as introduced**
1.	Siples	Hrdlicka	CM	**Fav/CS**
2.	Matiyow/Knudson	Phelps	RC	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1672 enacts the following changes to property insurance laws, primarily relating to Citizens Property Insurance Corporation (Citizens). The bill:

- Prohibits a public adjuster from accepting a power of attorney that vests in the public adjuster the right to select the person or entity that will perform repairs.
- Delays the prohibition for Citizens to provide coverage to structures within the Coastal Resources Barrier System by 1 year, from July 1, 2014, to July 1, 2015.
- Directs Citizens to stop writing new commercial residential multi-peril policies in the coastal account. Instead, Citizens will write separate Wind and All-Other Perils policies.
- Reduces 5 percent of the Citizens policyholder surcharge for deficits arising from the personal lines account and increases 5 percent of the Citizens policyholder surcharge for deficits arising from the coastal account.
- Requires all procurement protests within Citizens to be decided by the Division of Administrative Hearings.
- Directs Citizens to include commercial residential buildings within the Citizens policyholder eligibility clearinghouse program (clearinghouse) by October 1, 2015.
- Allows surplus lines insurers to make offers of similar coverage through the clearinghouse if no authorized insurers participating in the clearinghouse make an offer of coverage.
- Requires surplus lines insurers participating in the clearinghouse meet enhanced financial and disclosure requirements.

- Requires Citizens to issue an annual report of its estimated bonding capacity, estimated claims paying capacity, and estimated year-end cash balance.
- Increases the residential property insurance deductible for non-hurricane losses that must be offered by insurers from $500 to $1,000 (effective January 1, 2015).
- Prohibits an authorized mitigation inspector from paying any referral fees or other forms of compensation to an insurance agent, broker, or insurance agency employee that recommends the inspector's services to an insured. The bill also prohibits an insurance agent, broker, or insurance agency employee from accepting any referral fees or other forms of compensation from an authorized mitigation inspector.
- Allows an insurer to exempt from independent verification, a uniform mitigation verification form completed by an authorized mitigation inspector that has a quality assurance program approved by the insurer.
- Provides that a uniform mitigation verification form provided to Citizens and completed by an authorized mitigation inspector with a quality assurance program approved by Citizens is not subject to independent verification or re-inspection if there has been no material changes to the structure.

II. Present Situation:

Public Adjusters

A public adjuster is a person, other than a licensed attorney, who, for compensation, prepares or files an insurance claim form for an insured or third-party claimant in negotiating or settling an insurance claim on behalf of the insured or third party.[1] The responsibilities of property insurance public adjusters include inspecting the loss site, analyzing damages, assembling claim support data, reviewing the insured's coverage, determining current replacement costs, and conferring with the insurer's representatives to adjust the claim. Public adjusters are licensed by the Department of Financial Services (DFS) and must meet specified age, residency, examination, and surety bond requirements.[2] The conduct of a public adjuster is governed by statute and by rule.[3]

Citizens Property Insurance Corporation

Citizens Property Insurance Corporation (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.[4] Citizens is not a private insurance company.[5] 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 and the Florida Windstorm Underwriting Association. Citizens operates in accordance with s. 627.351(6), F.S., and is governed by a nine member board of

[1] Section 626.854(1), F.S.
[2] Section 626.865, F.S.
[3] *See generally*, ss. 626.854, 626.8698, 626.876, 626.878, 626.8795 and 626.8796, F.S., and Rule 69B-220, F.A.C.
[4] Admitted market means insurance companies licensed to transact insurance in Florida.
[5] Section 627.351(6)(a)1., F.S. Citizens is also subject to regulation by the Office of Insurance Regulation.

governors[6] (board) that administers its Plan of Operations, which is reviewed and approved by the Financial Services Commission.

Citizens offers property insurance in three separate accounts: personal lines, commercial lines, and coastal. Each account is a separate statutory account with separate calculations of surplus and deficits. Assets may not be commingled or used to fund losses in another account.[7]

The personal lines account (PLA) offers personal lines residential policies that provide comprehensive, multiperil coverage, except for those areas of the state covered by the coastal account. The PLA also writes policies that exclude wind coverage in areas contained within the coastal account. Personal lines residential coverage consists of the types of coverage provided by homeowner's, mobile home owner's, dwelling, tenant's, and condominium unit owner's policies.[8]

The commercial lines account (CLA) offers commercial lines residential and nonresidential policies that provide basic perils coverage, except for those areas covered by the coastal account. The CLA also writes policies that exclude coverage for wind in areas contained within the coastal account. Commercial lines coverage includes commercial residential policies covering condominium associations, homeowners' associations, and apartment buildings. The coverage also includes commercial nonresidential policies covering business properties.

The coastal account[9] offers personal residential, commercial residential, and commercial non-residential policies in eligible coastal areas. Citizens must offer policies that solely cover the peril of wind (wind only policies) and may offer multiperil policies.[10]

Eligibility for Citizens coverage is at times restricted, or alternatively, the amount of coverage provided by Citizens is limited. Personal lines residential structures are ineligible for Citizens if they have an insured value of $1 million or greater.[11] The eligibility threshold for such policies will be reduced annually in $100,000 increments until it reaches $700,000.[12] Citizens will insure commercial residential properties at unlimited values. Citizens writes only the first $1 million of commercial non-residential wind-only coverage and the first $2.5 million of commercial non-residential multi-peril policies.

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[6] The Governor, the Chief Financial Officer, the President of the Senate and the Speaker of the House of Representatives each appoint two members to the board. The Governor is also responsible for appointing one individual to serve solely as an advocate of the consumer. All members of the board must be Florida residents, and the board must be geographically diverse.
[7] Section. 627.351(6)(b)2.b., F.S.
[8] Citizens, *2010 Annual Report*, *available at* https://www.citizensfla.com/about/reports.cfm?show=pdf&link=/shared/documents/2010_AnnualReport.pdf (last visited Mar. 21, 2014).
[9] This account was formerly known as the High Risk Account.
[10] In August of 2007, Citizens began offering personal and commercial residential multiperil policies in this limited eligibility area. *See* Press Release, Citizens, *New Citizens Program Provides Potential Savings for Wind-Only Policyholders* (July 31, 2007), *available at* https://www.citizensfla.com/shared/press/articles/new/07_31_2007.cfm (last visited Mar. 21, 2014). Additionally, near the end of 2008, Citizens began offering commercial non-residential multiperil policies in this account. *See* Citizens, *2008 Annual Report*, *available at* https://www.citizensfla.com/shared/documents/2008_AnnualReport.pdf (last visited Mar. 24, 2014).
[11] Section 627.351(6)(a)3.a., F.S.
[12] *See* s. 627.351(a)3.a.-d., F.S. Effective January 1, 2017, the eligibility limit for coverage by Citizens will be $700,000.

Citizens Financial Resources for Paying Claims

Citizens' financial resources include insurance premiums, investment income, and operating surplus from prior years, Florida Hurricane Catastrophe Fund (FHCF) reimbursements, private reinsurance, policyholder surcharges, and regular and emergency assessments. Citizens projected surplus for 2014 and its policies, premium in force and total exposure as of January 31, 2014, is as follows:[13]

Table 1: Citizens Surplus, Premium, Exposure, and Premium in Force

Citizens Account	Surplus[14]	Policies In Force	Premium In Force[15]	Total Exposure[16]
PLA	$2.73 Billion	610,237	$999 Million	$113.4 Billion
CLA	$1.54 Billion	7,534	$196 Million	$36.8 Billion
Coastal	$3.39 Billion	383,106	$1.071 Billion	$164.6 Billion
TOTAL	$7.66 Billion	1,000,877	$2.266 Billion	$314.8 Billion

It is estimated that as of December 31, 2014, Citizens will have an accumulated surplus of approximately $7.66 billion.[17] Citizens has approximately $1.85 billion in private reinsurance/catastrophe bonds coverage[18] and $4.48 billion in mandatory layer reinsurance from the FHCF.[19] Citizens has additional pre-event liquidity[20] of $3.93 billion. For the 2014 storm season, Citizens has an estimated aggregate claims paying capacity of $17.9 billion.

If Citizens incurs a deficit (i.e. its obligations to pay claims exceeds its capital plus reinsurance recoveries), it may levy regular assessments on most of Florida's property and casualty insurance policyholders in a specific sequence set by statute as follows:[21]

[13] *See* Citizens, "Book of Business, Archived Policies in Force," *available at* https://www.citizensfla.com/about/corpfinancials.cfm (last visited Mar. 24, 2014).
[14] Citizens, *Annual Report of Aggregate Net Probable Maximum Losses, Financing Options, and Potential Assessments* (Feb. 4, 2014) (on file with Senate Banking and Insurance Committee). *See also* e-mail from Christine Turner, Vice President-Communications, Legislative and External Affairs, Citizens Property Insurance Corp. (Mar. 4, 2014) (on file with Senate Banking and Insurance Committee).
[15] Rounded to the nearest $1 million.
[16] Rounded to the nearest $100 million.
[17] *See supra* note 11 at 5. Surplus amounts consist of preliminary (unaudited) 2013 surplus and 2014 projected net income.
[18] 2014 projected private risk transfer estimated as of the 2013 program. *See supra* note 11 at 5.
[19] FHCF coverage is based on preliminary 2013 retention and payment multiples. Actual multiples may be significantly different (on file with Senate Banking and Insurance Committee). *See supra* note 11 at 6.
[20] Pre-Event Liquidity does not represent risk transfer and any monies drawn must be repaid.
[21] Sections 627.351(6)(b)3.a.,d., and i., F.S. *See also* Citizens, "Assessments," *available at* https://www.citizensfla.com/about/citizensAssessments.cfm (last visited Mar. 28, 2014).

Citizens Surcharge[22]

Require up to a 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[23]

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 compensation). 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[24]

Requires any remaining deficit for either of Citizens three accounts be funded by multi-year emergency assessments on all insurance policyholders, including Citizens policyholders.[25] 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.

Citizens resources for paying claims and assessable shortfall amounts for probable maximum loss events occurring once every 50 years, 100 years, and 250 years are detailed in tables 2-A, 2-B, and 2-C, below.[26]

Table 2-A: Citizens 1 in 50 Year Probable Maximum Losses (PML) and Potential Assessments[27]
($ in billions)

Citizens Accounts	1: 50 Year PML Loss	Surplus Recovery	FHCF Reimbursement	Reinsurance/ Cat Bonds	Assessable Shortfall
PLA/CLA	$3.129	$1.428	$1.702	$0	$0
Coastal	$7.563	$2.934	$2.780	$1.850	$0
TOTAL	$10.657	$4.326	$4.481	$1.850	$0

[22] Section 627.351(6)(b)3.i., F.S.
[23] Section 627.351(6)(b)3.a., F.S.
[24] Section 627.351(6)(b)3.d., F.S.
[25] Emergency assessments are not levied against medical malpractice and workers compensation policyholders.
[26] Citizens, *Annual Report of Aggregate Net Probable Maximum Losses, Financing Options, and Potential Assessments* at 5.
[27] PML is based on policies in-force as of December 31, 2013, using a computer-based simulation model, AIR CLASIC/2, Version 15.0, based on a weighted average of Standard Sea Surface Temperature (SSST) and Warm Sea Surface Temperature (WSST) Event Catalogs and include estimated loss adjustment expenses. Although combined PMLs and surplus are shown, assessments are triggered at an account level. FHCF coverage is combined for PLA/CLA and separate for the coastal account. PMLs are not additive; the combined value shown is not the sum of PLA/CLA and Coastal PMLs.

Table 2-B: Citizens 1 in 100 Year Probable Maximum Losses and Potential Assessments ($ in billions)

Citizens Accounts	1: 100 Year PML Loss	Surplus Recovery	FHCF Reimbursement	Reinsurance/ Cat Bonds	Assessable Shortfall
PLA/CLA	$5.406	$3.704	$1.702	$0	$0
Coastal	$11.841	$3.390	$2.780	$1.850	$3.822
TOTAL	$17.448	$7.660	$4.481	$1.850	$3.456

Table 2-C: Citizens 1 in 250 Year Probable Maximum Losses and Potential Assessments ($ in billions)

Citizens Accounts	1: 250 Year PML	Surplus Recovery	FHCF Reimbursement	Reinsurance/ Cat Bonds	Assessable Shortfall
PLA/CLA	$9.532	$4.270	$1.702	$0	$3.560
Coastal	$19.165	$3.390	$2.780	$1.850	$11.145
TOTAL	$28.303	$7.660	$4.481	$1.850	$14.311

Citizens Rates

Rates for Citizens coverage are required to be actuarially sound,[28] except that Citizens may not implement a rate increase that exceeds 10 percent for any single policy other than sinkhole coverage, excluding coverage changes and surcharges.[29] The 10 percent limitation on rate increases is referred to as the Citizens rate "glide path" to achieving actuarially sound rates.[30] The implementation of this increase ceases when Citizens has achieved actuarially sound rates. In addition to the overall glide path rate increase, 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.[31]

Citizens Clearinghouse

In 2013, the Legislature mandated the creation of the Citizens Property Insurance Corporation Policyholder Eligibility Clearinghouse Program (clearinghouse) for personal residential risks.[32] The clearinghouse has two purposes:

- To determine if a new or renewal policy is eligible for Citizens coverage; and
- To enhance access of new Citizens applicants and existing Citizens policyholders to offers of coverage from authorized insurers.[33]

[28] Section 627.351(6)(n)1., F.S.
[29] Section 627.351(6)(n)6., F.S.
[30] With the enactment of ch. 2007-1, L.O.F., from January 25, 2007, to January 1, 2010, Citizens rates were fixed by statute at the rates that were in effect on December 31, 2006. The Legislature also rescinded a Citizens rate increase that had taken effect January 1, 2007, and resulted in a statewide average rate increase of 12 percent for policies in the personal lines account and 21.4 percent for policies in the high risk account (since renamed the coastal account) (on file with Senate Banking and Insurance).
[31] Section 215.555(5)(b), F.S.
[32] Chapter 2013-60, L.O.F.
[33] Section 627.3518(2), F.S.

The clearinghouse facilitates the diversion of ineligible applicants and existing policyholders from the corporation into the voluntary insurance market. Citizens launched the personal residential clearinghouse for new applicants on January 27, 2014.[34]

All applicants for Citizens personal lines residential coverage and all Citizens personal lines residential policies at renewal are submitted to the clearinghouse. The clearinghouse interacts with participating private-market insurers to match specific risks with the OIR approved rating and underwriting criteria of each participating insurer. The clearinghouse displays all quotes that have been received for each risk submitted. However, a Citizens quote will be displayed as ineligible if one or more participating insurers makes a comparable offer of coverage priced within 15 percent of Citizens' premium for new applicants[35] or for a renewal policy makes a comparable offer of coverage priced no more than Citizens current rate. If a risk is deemed ineligible for Citizens, the policyholder's agent will be unable to submit the application to Citizens but will be able to access the offering insurer's policy system to bind the coverage. While the same eligibility thresholds apply for new commercial policies,[36] there is no clearinghouse for commercial-residential and commercial non-residential new or renewal policies written by Citizens.

Citizens was also directed to develop appropriate procedures for developing a clearinghouse for commercial residential coverage that would divert ineligible applicants and existing Citizens policyholders into the private insurance market.[37] Citizens issued a report on December 30, 2013, detailing its compliance with statutory requirements.[38] The report indicates that admitted insurers currently writing commercial residential property in Florida are interested in participating in a commercial residential clearinghouse. Citizens also indicated that it has been contacted by prospective insurers targeting commercial residential lines and opined that there is significant interest in this product line. The lack of statutory authority to create a clearinghouse was identified as the primary obstacle to its creation.

Surplus Lines Insurance

Surplus lines insurance refers to a category of insurance for which there is no market available through standard insurance carriers in the admitted market (insurance companies authorized to transact insurance in Florida).[39] There are three basic categories of surplus lines risks:

- Specialty risks that have unusual underwriting characteristics or underwriting characteristics that admitted insurers view as undesirable;
- Niche risks for which admitted carriers do not have a filed policy form or rate; and

[34] Press Release, Citizens, *Citizens Statement on Property Insurance Clearinghouse Rollout* (Jan. 27, 2014), *available at* https://www.citizensfla.com/shared/press/articles/141/01.27.2014.pdf (last visited Mar. 28, 2014).
[35] Section 627.351(6)(c)5.a., F.S. *See also* Citizens, *The Property Insurance Clearinghouse Providing New Options for Florida Homeowners* (2014), *available at* https://www.citizensfla.com/shared/clearinghouse/documents/ProvidingNewOptions.pdf *(*last visited Mar. 28, 2014).
[36] Section 627.351(6)(c)5.b., F.S.
[37] Chapter 2013-60, s. 10, L.O.F., Section 627.3518(2), F.S.
[38] Citizens, *Property Insurance Clearinghouse Commercial Lines Report* (Dec. 31, 2014), *available at* https://www.citizensfla.com/shared/press/legislation/78/12.30.2013.pdf (last visited Mar. 28, 2014).
[39] Florida Department of Financial Services, Division of Consumer Services, *Surplus Lines Insurance: Insuring the Uninsurable, available at*

- Capacity risks, which are risks where an insured needs higher coverage limits than those that are available in the admitted market.

Surplus lines insurers are not "authorized" insurers as defined in the Florida Insurance Code and thus do not obtain a certificate of authority from the OIR to transact insurance in Florida. Rather, surplus lines insurers are "unauthorized" or "nonadmitted" insurers, but are eligible to transact surplus lines insurance under the surplus lines law as "eligible surplus insurers."[40] The OIR determines whether a surplus lines insurer is "eligible" based on statutory guidelines. Eligibility requirements reviewed by the OIR for surplus lines include:

- Eligibility is requested in writing for the insurer by the Florida Surplus Lines Service Office;
- Insurer was authorized for the prior 3 years in the state or country of its domicile to write the kinds of insurance the insurer wants to write in Florida (with limited exceptions);
- Insurer provides the OIR with its current annual financial statement;
- Insurer meets surplus requirements (delineated below); and
- Insurer has a good reputation relating to payment of claims and policyholder service.[41]

Generally, a surplus lines insurer must have and maintain a surplus of $15 million or more in order to obtain and maintain eligibility. In addition, an insurer formed outside the U.S. must have and maintain in the U.S., a trust fund containing at least $5.4 million.[42] The OIR has no duty or responsibility to determine the actual financial condition or claims practice of surplus lines insurers.[43] A finding of eligibility by the OIR only means the surplus lines insurer *appears* to be financially sound and to have a satisfactory claims practice.

The OIR must withdraw the eligibility of a surplus lines insurer if the OIR has reason to believe the insurer is insolvent or is in unsound financial condition; does not make reasonable prompt payment of claims; or does not meet the statutory guidelines for eligibility (including maintenance of $15 million in surplus). The OIR may withdraw the eligibility of a surplus lines insurer if the insurer willfully violates a statute or rule. [44]

Division of Administrative Hearings (DOAH)

The DOAH is a state agency that employs full-time administrative law judges to conduct hearings in most cases in which the substantial interests of a person are determined by an agency and which involve a disputed issue of material fact.[45] When a state agency proposes to take some action that is adverse to a person, the affected person is normally entitled to request an administrative hearing to determine the matter.[46] Requests for hearings are initially made to the appropriate state agency. If the case does not involve disputed facts, the agency itself will

http://www.myfloridacfo.com/division/consumers/UnderstandingCoverage/Guides/documents/SurplusLines.pdf (last visited Mar. 31, 2014).
[40] Section 626.914(2), F.S.
[41] Section 626.918, F.S.
[42] Section 626.918(2)(d)1.a., F.S.
[43] Section 626.918(4), F.S.
[44] Section 626.919, F.S.
[45] *See* ss. 120.52, 120.569, and 120.65, F.S.
[46] DOAH, "Representing Yourself Before the Division of Administrative Hearings," *available at* http://www.doah.state.fl.us/ALJ/RepYourself.pdf (last visited Mar. 31, 2014).

conduct a proceeding and subsequently render a decision. If the request for hearing indicates that the affected person disputes facts upon which the proposed action is based, the agency ordinarily refers the case to the DOAH for a hearing. The DOAH provides a hearing conducted by an independent and neutral administrative law judge who thereafter enters a Recommendation or Final Order, which is provided to the state agency and the parties in the case. In the case of a Recommended Order, the agency reviews the Order and issues a final decision, which usually adopts the judge's factual findings, but may under certain circumstances reject or modify certain legal conclusions of the judge or the recommended penalty, if any. If the final decision is adverse to the non-agency party, an appeal may be taken within a limited time to a District Court of Appeal.

Personal Lines Residential Required Deductible Offering

Currently, s. 627.701(7), F.S., requires that for personal lines residential insurance, the insurer must offer a deductible of $500 applicable to losses from perils other than hurricanes. This offer must be made on a form approved by the OIR and must be made at least once every 3 years.

Uniform Mitigation Verification Inspection Form

Since 2003, insurers have been required to provide mitigation credits, discounts, other rate differentials, or reductions in deductibles (mitigation discounts) to reduce residential property insurance premiums for properties with mitigation features.[47] Section 627.711, F.S., requires insurers to clearly notify an applicant or policyholder of a personal lines residential property insurance policy of the availability and range of each premium discount, credit, other rate differential, or reduction in deductibles, for wind mitigation. The notice must be provided when the policy is issued and renewed.

Typically, policyholders are responsible for substantiating to their insurers that the insured property has mitigation features, usually by submitting a completed uniform mitigation verification inspection form to the insurer to substantiate mitigation features. Insurers must accept mitigation forms prepared by home inspectors, building code inspectors, contractors, engineers, and architects and may accept forms prepared by persons determined to be qualified by the insurer to prepare the form.

Insurers can require mitigation forms provided to the insurer by mitigation inspectors or a mitigation inspection company be independently verified for quality assurance purposes before accepting the mitigation form as valid. The insurer must pay for the independent verification.[48] At their expense, insurers can also independently verify, for quality assurance purposes, mitigation forms submitted by policyholders or insurance agents.

[47] Section 627.0629(1), F.S. Mitigation features are construction techniques used or items purchased and installed by a property owner to protect a structure against windstorm damage and loss. (e.g., hurricane shutters, hip roof, specified roof covering).
[48] Section 627.711(8), F.S.

Certified Wind Mitigation Inspector

Under current law, an insurer must accept a uniform mitigation verification form signed by an authorized mitigation inspector. Those who qualify as an authorized mitigation inspector include:[49]

- A home inspector licensed under s. 468.8314, F.S., who has completed at least 3 hours of hurricane mitigation training approved by the Construction Industry Licensing Board which includes hurricane mitigation techniques and compliance with the uniform mitigation verification form and completion of a proficiency exam;
- A building code inspector certified under s. 468.607, F.S.;
- A general, building, or residential contractor licensed under s. 489.111, F.S.;
- A professional engineer licensed under s. 471.015, F.S.;
- A professional architect licensed under s. 481.213, F.S.; or
- Any other individual or entity recognized by the insurer as possessing the necessary qualifications to properly complete a uniform mitigation verification form.

A person who is authorized to sign a mitigation verification form must inspect the structures referenced by the form personally, not through employees or other persons, and must certify or attest to personal inspection of the structures referenced by the form.[50] However, licensed engineers and licensed contractors may authorize a direct employee, who is not an independent contractor and who possesses the requisite skill, knowledge, and experience, to conduct a mitigation verification inspection. Insurers shall have the right to request and obtain information regarding any authorized employee's qualifications prior to accepting a mitigation verification form.

An authorized mitigation inspector that signs a uniform mitigation form and a direct employee authorized to conduct mitigation verification inspections may not commit misconduct when performing an inspection.[51] Misconduct occurs when an authorized mitigation inspector signs a uniform mitigation verification form that:

- Falsely indicates that he or she personally inspected the structures referenced by the form;
- Falsely indicates the existence of a feature which entitles an insured to a mitigation discount that the inspector knows does not exist or did not personally inspect;
- Contains erroneous information due to the gross negligence of the inspector; or
- Contains a pattern of demonstrably false information regarding the existence of mitigation features that could give an insured a false evaluation of the ability of the structure to withstand major damage from a hurricane endangering the safety of the insured's life and property.

The licensing board of an authorized mitigation inspector may commence disciplinary proceedings and impose administrative fines and other sanctions for such misconduct violations.[52]

[49] Section 627.711(2)(a), F.S.
[50] Section 627.711(3), F.S.
[51] Section 627.711(4), F.S.
[52] Section 627.711(5), F.S.

In 2013, the Department of Business and Professional Regulation (DBPR) issued a declaratory statement regarding the prohibition against the offering of referral fees for home inspection referrals.[53] The statement concluded licensed home inspectors authorized to complete mitigation inspections are not prohibited under current law from paying referral fees to insurance agents and brokers who recommend their services. The DBPR declaratory statement clarifies that s. 468.8319(1)(h), F.S., only prohibits licensed home inspectors from paying referral fees to licensed real estate agents and licensed real estate brokers.

III. Effect of Proposed Changes:

Public Adjusters (Section 1, amends s. 626.854(18), F.S.)

The bill prohibits the execution of a power of attorney that vests the authority to choose the persons or entities that will perform repair work on a residential property insurance loss in a public adjuster, a public-adjuster apprentice, or any person acting on their behalf.

Coastal Barrier Resources System prohibition of coverage exemption (Section 2, amends s. 627.351(6)(a)5.b., F.S.)

In 2013, the Legislature made properties located within the Coastal Barrier Resources System to be ineligible for coverage by Citizens if a building permit for new construction or substantial improvement was applied for on or after July 1, 2014.[54] The bill postpones this date to July 1, 2015.

Commercial Residential Insurance in the Coastal Account (Section 2, amends s. 627.351(6)(b)2.a.(III), F.S.)

Effective July 1, 2014, Citizens may not offer new commercial residential multiperil insurance policies in the coastal account. Instead, Citizens will continue to offer commercial residential wind-only policies and separate commercial residential policies that exclude wind. Citizens may continue renewing commercial residential multi-peril policies within the coastal account that that is insured by Citizens on June 30, 2014.

Citizens Policyholder Surcharge (Section 2, amends s. 627.351(6)(b)3.i.(I), F.S.)

If the Citizens Board of Governors (board) determines that one or more of the three accounts (personal lines, commercial lines, or coastal) has a projected deficit, the board levies a Citizens policyholder surcharge against all policyholders of the corporation. Current law allows a policyholder surcharge of up to 15 percent of the premium to be levied to fund a deficit for each Citizens account. All Citizens policyholders are subject to the surcharges, regardless of which account is projected to have a deficit. For example, if the board projected a deficit for the coastal account requiring a 10 percent policyholder surcharge and a deficit for the personal lines account requiring a 2 percent surcharge, all Citizens policyholders would be charged a 12 percent

[53] *In re: Petition for Declaratory Statement, Don Meyler Inspections, Inc.*, Case No. DS 2013-39 (DBPR July 19, 2013), *available at* http://www.myfloridalicense.com/dbpr/pro/homein/documents/ds_04_2013-039.pdf (last visited Apr. 8, 2014).
[54] Chapter 2013-60, s. 7, L.O.F.

surcharge. Citizens' policyholders are subject to a maximum 45 percent surcharge consisting of up to 15 percent for each of the three accounts.

The bill increases the maximum Citizens policyholder surcharge for coastal account deficits to 20 percent of the premium and decreases the maximum surcharge for personal lines account deficits to 10 percent of the premium. The maximum surcharge liability of all Citizens policyholders remains unchanged at no more than 45 percent of the premium.

Competitive Procurement Protests (Section 2, amends ss. 627.351(6)(e)2.b.(II) and 627.351(6)(e)3., F.S.)

The bill removes the authority of the board to decide protests relating to competitive procurement and requires the board to contract with the DOAH to hear such protests instead. Citizens must reimburse the costs incurred by the DOAH related to hearing the protests. The bill grants the DOAH jurisdiction to hear the cases and issue recommended orders. The DOAH's rules and procedures apply to the proceedings; however, bond requirements do not. The board, as the "agency head," will consider the recommended orders and take final action on the protest. The board's final action is appealable to the First District Court of Appeal.

Surplus Lines Insurer Participation in Citizens Clearinghouse (Section 3, amends s. 627.3518, F.S.)

The bill defines "surplus lines insurer" as an unauthorized insurer that the OIR has made eligible to issue coverage under the Surplus Lines Law.[55]

The bill authorizes surplus lines insurers to participate in the Citizens clearinghouse program beginning January 1, 2015. A surplus lines insurer must offer similar coverage to that provided by Citizens. Coverage may be offered by a surplus lines insurer only if the risk receives no coverage offers from authorized insurers. An offer of coverage from a surplus lines insurer will not affect whether a risk is eligible to be insured by Citizens.

The surplus lines insurer must provide prominent notice that:

- An applicant in the clearinghouse is not required to accept an offer of coverage from a surplus lines insurer;
- An offer of coverage from a surplus lines insurer does not affect the applicant's eligibility for coverage from Citizens;
- An applicant who accepts an offer of coverage from a surplus lines insurer may submit a new application for coverage to Citizens at any time;
- Surplus lines policies are not covered by the Florida Insurance Guaranty Association (FIGA); and
- Rates for surplus lines insurance are not subject to review by the OIR.

[55] Sections 626.913-626.937, F.S.

The notice must also include any other information required by the OIR. The notice must be signed by the policyholder and kept on file with the surplus lines insurer for as long as the policyholder remains insured by the surplus lines insurer.[56]

A Citizens policyholder who accepts an offer of coverage from a surplus lines insurer and subsequently applies for coverage with Citizens within 36 months of being insured by Citizens will be considered a renewal policy. The rates on such policies will be rated as renewals and thus be subject to the 10 percent limit on annual rate increases.

To participate in the clearinghouse, the surplus lines insurer must be eligible to offer coverage under Florida's Surplus Lines Law and must maintain at least a $50 million surplus on a company or pooled basis, be rated A- or higher by A.M. Best Company,[57] and have the ability to cover the insurer's 100-year probable maximum hurricane loss at least twice in a single hurricane season through its reserves, surplus, reinsurance and reinsurance equivalents.

Inclusion of Commercial Residential Risks within the Citizens Clearinghouse (Section 3, amends 627.3518(2), F.S.)

The bill requires Citizens to implement procedures for facilitating offers of coverage to commercial residential risks through the clearinghouse by October 1, 2015.

Reports Submitted by Citizens (Sections 2 and 5, amend ss. 627.351(6)(hh) and 627.35191, F.S., and Section 4, repeals s. 627.3519, F.S.)

Current law requires Citizens to report, for each calendar year, its loss ratios for residential non-catastrophic losses on a statewide average and county basis to the OIR. The bill changes the reporting date to March 1, rather than January 15, to provide Citizens sufficient time to complete the report (**Section 2**). The bill repeals the report required under s. 627.3519, F.S., as it is duplicative of the report requirements under s. 627.35191, F.S. (**Section 4**). The bill requires Citizens to provide a new report detailing its estimated borrowing capacity, claims-paying capacity, and estimated year-end balance to the Legislature and the Financial Services Commission in May of each year (**Section 5**).

Offer of Personal Lines Residential Property Insurance Deductible (Section 6, amends s. 627.701(7), F.S., effective January 1, 2015)

Under current law, prior to issuing a personal lines residential property insurance policy, the insurer must offer a $500 deductible applicable to non-hurricane losses. The bill increases the minimum deductible that must be offered for non-hurricane losses to $1,000 for all such policies issued on or after January 1, 2015. For policies issued before that date, the $1,000 deductible

[56] In addition to the notice required by the bill, currently, the insured must be provided notice that surplus lines insurers' policy rates and forms are not approved by any Florida regulatory agency and that surplus lines insurers are not protected by the FIGA (s. 621636.924 F.S.); and personal residential property insured must be informed in writing that coverage may be available and less expensive from Citizens, but that Citizens assessments are higher and that Citizens coverage may be less than the property's existing coverage (s. 626.916(1(e), F.S.)

[57] Specifically, the surplus lines insurer must be rated as superior, excellent, exceptional, or equally comparable financial strength by a rating agency acceptable by the OIR.

must also be offered before the first renewal of a policy on or after January 1, 2015. The insurer must continue providing notice of this deductible offering at least once every 3 years, as required under current law.

Mitigation Inspectors – Prohibition on Referral Fees (Section 7, amends s. 627.711, F.S.)

The bill prohibits an authorized mitigation inspector from paying any referral fees or other forms of compensation to an insurance agent, broker, or insurance agency employee that recommends an inspector's services to an insured. Additionally, the bill prohibits an insurance agent, broker, or insurance agency employee from accepting any referral fees or other forms of compensation from an authorized mitigation inspector.

Verification of Uniform Mitigation Forms (Section 7, amends s. 627.711, F.S.)

The bill permits an insurer to exempt a uniform mitigation form from the independent verification process if it is completed by an authorized mitigation inspector that possesses a quality assurance program approved by the insurer. The bill does not allow independent verification of mitigation discount forms submitted to Citizens if a quality assurance program approved by Citizens reviewed and verified the form when it was submitted. In addition, Citizens is not allowed to re-inspect a property to confirm mitigation features if the mitigation form was reviewed and verified by a quality assurance program approved by Citizens.

Effective Date (Section 8)

The effective date of the bill is July 1, 2014, except as otherwise provided.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The inclusion of commercial residential policies within the Citizens clearinghouse would help enforce the 15 percent eligibility requirement for new Citizens applicants, and encourage private-market insurers to offer coverage to existing Citizens policyholders. Private market insurers are actively writing commercial residential policies that insure newer buildings with a replacement cost greater than $10 million.[58] Citizens estimates that approximately up to 15 percent of its current commercial residential policies would be attractive to the private market, given Citizens' current rates for such risks and their characteristics such as location, age and building construction type. Commercial residential policies constitute approximately 20 percent of Citizens total risk, with a PML of $4.2 billion.[59]

Allowing surplus lines insurers to participate in the Citizens clearinghouse may serve to further depopulate Citizens. The bill requires a participating surplus lines insurer to maintain at least $50 million in surplus and demonstrate the ability to cover two 1 in 100 PML events in a single hurricane season. If these financial protections prove insufficient to prevent an insolvency, claims of policyholders who accept an offer of coverage from a surplus lines insurer will not be covered by the Florida Insurance Guaranty Association.

Prohibiting Citizens from writing new commercial residential multi-peril policies in the coastal account and instead allowing Citizens to offer separate wind-only and all-other perils (AOP) policies may further depopulate commercial residential multi-peril policies in the coastal account. Testimony from Citizens representatives indicated a rate arbitrage issue exists, whereby the Citizens premium in the coastal account for multi-peril policies is less expensive than the Citizens premiums for a wind-only policies plus a separate AOP policy.[60] Citizens' rates for AOP coverage, if rated separately from wind, are approximately competitive with the private market. When wind and AOP are combined in a multi-peril product, the rate becomes non-competitive with the private market.

The reduction by 5 percent of the Citizens policyholder surcharge for deficits arising from the personal lines account and the increase by 5 percent of the Citizens policyholder surcharge for deficits arising from the coastal account, depending on the storm scenario, could result in every Citizens policyholder paying less, more, or the same amount when compared to current law of no more than 15 percent per account.

C. Government Sector Impact:

Citizens may incur expenses associated with implementing procedures to include commercial residential risks within the Citizens clearinghouse.

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[58] Citizens, *Property Insurance Clearinghouse Commercial Lines Report* at 6.
[59] Citizens, *Property Insurance Clearinghouse Commercial Lines Report* at 4.
[60] Testimony by Christine Ashburn, Vice President, Communications, Legislative and External Affairs, Citizens, before the Senate Banking and Insurance Committee in Tallahassee, Fl. (Feb. 18, 2014). *See also* Letter from Barry Gilway, President/CEO and Executive Director, Citizens (Jan. 13, 2014), *available at* http://www.flsenate.gov/PublishedContent/Committees/2012-2014/BI/MeetingRecords/MeetingPacket_2519.pdf (last visited Mar. 31, 2014).

The bill requires Citizens to pay for all costs associated with any procurement protests heard by DOAH.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 626.854, 627.351, 627.3518, 627.35191, 627.701, and 627.711.

This bill repeals section 627.3519 of the Florida Statutes.

IX. Additional Information:

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

CS by Commerce and Tourism on April 7, 2014:

- Prohibits a public adjuster or public adjuster apprentice from accepting a power of attorney that authorizes him or her to choose the person or entity to perform repair work.
- Postpones the date that new construction or substantial improvement to a structure in the Coastal Barrier Resources System is ineligible for coverage by Citizens to July 1, 2015, from July 1, 2014.
- Deletes the bill provision that exempted properties located within counties for which Citizens provides windstorm coverage for more than 75 percent of the personal lines policies with windstorm coverage from the prohibition on coverage by Citizens in the Coastal Barrier Resources System.
- Deletes the bill provision that allowed Citizens policyholders who live in counties with stronger building codes to receive greater mitigation than currently allowed on the uniform mitigation verification form.
- Prohibits a mitigation inspector from offering compensation or other inducement and an insurance agency, agent, customer representative, or employee from accepting compensation or other inducement for referring a property owner to the inspector or inspection company.
- Allows an insurer to exempt from independent verification, a uniform mitigation verification form, completed by an authorized mitigation inspector that has a quality assurance program approved by the insurer.
- Provides that a uniform mitigation verification form provided to Citizens is not subject to re-inspection, if there have been no material changes to the structure, or

independent verification, if the form is completed by an authorized mitigation inspector that has a quality assurance program approved by Citizens.

B. Amendments:

None.

221360

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Rules (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete lines 834 - 850.

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

And the title is amended as follows:

Delete lines 47 - 49

and insert:

Commission; amending s.

By the Committees on Commerce and Tourism; and Banking and Insurance

577-03927A-14 20141672c1

A bill to be entitled

An act relating to property insurance; amending s. 626.854, F.S.; prohibiting a public adjuster or public adjuster apprentice from choosing the persons or entities that will perform repair work; amending s. 627.351, F.S.; postponing the date that new construction or substantial improvement is not eligible for coverage by the corporation; deleting reference to the Residential Property and Casualty Joint Underwriting Association with respect to issuing certain residential or commercial policies; requiring the corporation to cease offering new commercial residential policies providing multiperil coverage after a certain date and providing that the corporation continue offering commercial residential wind-only policies; authorizing the corporation to offer commercial residential policies excluding wind; providing exceptions; specifying the amount of the surcharge to be assessed against personal lines, commercial lines, and coastal accounts to cover a projected deficit; requiring the corporation's board to contract with the Division of Administrative Hearings to hear protests of the corporation's decisions regarding the purchase of commodities and contractual services and issue a recommended order; requiring the board to take final action in a public meeting; revising the date for submitting the annual loss ratio report for residential coverage; amending s. 627.3518, F.S.; defining the term "surplus lines

Florida Senate - 2014 CS for SB 1672

577-03927A-14 20141672c1

insurer"; requiring the corporation to implement procedures for diverting ineligible applicants and existing policyholders for commercial residential coverage from the corporation by a certain date; deleting the requirement that the corporation report such procedures to the Legislature; authorizing eligible surplus lines insurers to participate in the corporation's clearinghouse program and providing criteria for such eligibility; conforming cross-references; providing that certain applicants who accept an offer from a surplus lines insurer are considered a renewal; repealing s. 627.3519, F.S., relating to an annual report requirement relating to aggregate net probable maximum losses; amending s. 627.35191, F.S.; requiring the corporation to annually provide certain estimates for the next 12-month period to the Legislature and the Financial Services Commission; amending s. 627.701, F.S.; increasing the amount of the deductible that an insurer must offer for residential property insurance; amending s. 627.711, F.S.; prohibiting a mitigation inspector from offering or delivering compensation, and an insurance agency, agent, customer representative, or employee from accepting compensation for referring an owner to the inspector or inspection company; authorizing an insurer to exempt a uniform mitigation verification form from independent verification under certain circumstances; providing that the form provided to the corporation is not subject to verification and the

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

property is not subject to reinspection under certain circumstances; providing effective dates.

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

Section 1. Subsection (18) of section 626.854, Florida Statutes, is renumbered as subsection (19) and amended, and subsection (18) is added to that section, to read:

626.854 "Public adjuster" defined; prohibitions.—The Legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

(18) A public adjuster, a public adjuster apprentice, or any person acting on behalf of an adjuster or apprentice may not enter into a contract or accept a power of attorney that vests in the public adjuster, the public adjuster apprentice, or the person acting on behalf of the adjuster or apprentice the effective authority to choose the persons or entities that will perform repair work.

(19)~~(18)~~ ~~The provisions of~~ Subsections (5)-(18) ~~(5)-(17)~~ apply only to residential property insurance policies and condominium unit owner policies as described ~~defined~~ in s. 718.111(11).

Section 2. Paragraphs (a), (b), (e), and (hh) of subsection (6) of section 627.351, Florida Statutes, are amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(a) The public purpose of this subsection is to ensure that there is an orderly market for property insurance for residents

and businesses of this state.

1. The Legislature finds that private insurers are unwilling or unable to provide affordable property insurance coverage in this state to the extent sought and needed. The absence of affordable property insurance threatens the public health, safety, and welfare and ~~likewise threatens~~ the economic health of the state. The state, therefore, has a compelling public interest and a public purpose to assist in assuring that property in the state is insured ~~and that it is insured~~ at affordable rates so as to facilitate the remediation, reconstruction, and replacement of damaged or destroyed property in order to reduce or avoid ~~the~~ negative effects on ~~otherwise resulting to~~ the public health, safety, and welfare, to the economy of the state, and to the revenues of the state and local governments which are needed to provide for the public welfare. It is necessary, therefore, to provide affordable property insurance to applicants who are in good faith entitled to procure insurance through the voluntary market but are unable to do so. The Legislature intends, therefore, that affordable property insurance be provided and that it continue to be provided, as long as necessary, through Citizens Property Insurance Corporation, a government entity that is an integral part of the state~~,~~ and ~~that is~~ not a private insurance company. To that end, the corporation shall strive to increase the availability of affordable property insurance in this state, while achieving efficiencies and economies, and while providing service to policyholders, applicants, and agents which is no less than the quality generally provided in the voluntary market, for the achievement of the foregoing public purposes.

Because it is essential for this government entity to have the maximum financial resources to pay claims following a catastrophic hurricane, it is further the intent of the Legislature that the corporation continue to be an integral part of the state, ~~and~~ that the income of the corporation be exempt from federal income taxation, and that interest on the debt obligations issued by the corporation be exempt from federal income taxation.

2. The Residential Property and Casualty Joint Underwriting Association originally created by this statute shall be known as the Citizens Property Insurance Corporation. The corporation shall provide insurance for residential and commercial property, for applicants who are entitled, but, in good faith, are unable to procure insurance through the voluntary market. The corporation shall operate pursuant to a plan of operation approved by order of the Financial Services Commission. The plan is subject to continuous review by the commission. The commission may, by order, withdraw approval of all or part of a plan if the commission determines that conditions have changed since approval was granted and that the purposes of the plan require changes in the plan. For the purposes of this subsection, residential coverage includes both personal lines residential coverage, which consists of the type of coverage provided by homeowner's, mobile home owner's, dwelling, tenant's, condominium unit owner's, and similar policies; and commercial lines residential coverage, which consists of the type of coverage provided by condominium association, apartment building, and similar policies.

3. With respect to coverage for personal lines residential

structures:

a. Effective January 1, 2014, a structure that has a dwelling replacement cost of $1 million or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $1 million or more is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2013, may continue to be covered by the corporation until the end of the policy term. The office shall approve the method used by the corporation for valuing the dwelling replacement costs under ~~cost for the purposes of~~ this subparagraph. If a policyholder is insured by the corporation before being determined to be ineligible pursuant to this subparagraph and such policyholder files a lawsuit challenging the determination, the policyholder may remain insured by the corporation until the conclusion of the litigation.

b. Effective January 1, 2015, a structure that has a dwelling replacement cost of $900,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $900,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2014, may continue to be covered by the corporation only until the end of the policy term.

c. Effective January 1, 2016, a structure that has a dwelling replacement cost of $800,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $800,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2015, may continue to be covered by the corporation until the end of the policy term.

d. Effective January 1, 2017, a structure that has a dwelling replacement cost of $700,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $700,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2016, may continue to be covered by the corporation until the end of the policy term.

The requirements of sub-subparagraphs b.-d. do not apply in counties where the office determines there is not a reasonable degree of competition. In such counties a personal lines residential structure that has a dwelling replacement cost of less than $1 million, or a single condominium unit that has a combined dwelling and contents replacement cost of less than $1 million, is eligible for coverage by the corporation.

4. It is the intent of the Legislature that policyholders, applicants, and agents of the corporation receive service and treatment of the highest possible level but never less than that generally provided in the voluntary market. It is also intended that the corporation be held to service standards no less than those applied to insurers in the voluntary market by the office with respect to responsiveness, timeliness, customer courtesy, and overall dealings with policyholders, applicants, or agents of the corporation.

5.a. Effective January 1, 2009, a personal lines residential structure that is located in the "wind-borne debris region," as defined in s. 1609.2, International Building Code (2006), and that has an insured value on the structure of $750,000 or more is not eligible for coverage by the corporation

unless the structure has opening protections as required under the Florida Building Code for a newly constructed residential structure in that area. A residential structure is deemed to comply with this subparagraph if it has shutters or opening protections on all openings and if such opening protections complied with the Florida Building Code at the time they were installed.

b. Any major structure as defined in s. 161.54(6)(a) for which a permit is applied on or after July 1, 2015 ~~2014~~, for new construction or substantial improvement as defined in s. 161.54~~(12)~~ is not eligible for coverage by the corporation if the structure is seaward of the coastal construction control line established pursuant to s. 161.053 or is within the Coastal Barrier Resources System as designated by 16 U.S.C. ss. 3501-3510.

(b)1. All insurers authorized to write one or more subject lines of business in this state are subject to assessment by the corporation and, for the purposes of this subsection, are referred to collectively as "assessable insurers." Insurers writing one or more subject lines of business in this state pursuant to part VIII of chapter 626 are not assessable insurers; however, ~~but~~ insureds who procure one or more subject lines of business in this state pursuant to part VIII of chapter 626 are subject to assessment by the corporation and are referred to collectively as "assessable insureds." An insurer's assessment liability begins on the first day of the calendar year following the year in which the insurer was issued a certificate of authority to transact insurance for subject lines of business in this state and terminates 1 year after the end of

the first calendar year during which the insurer no longer holds a certificate of authority to transact insurance for subject lines of business in this state.

2.a. All revenues, assets, liabilities, losses, and expenses of the corporation shall be divided into three separate accounts as follows:

(I) A personal lines account for personal residential policies issued by the corporation~~, or issued by the Residential Property and Casualty Joint Underwriting Association and renewed by the corporation,~~ which provides comprehensive, multiperil coverage on risks that are not located in areas eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas;

(II) A commercial lines account for commercial residential and commercial nonresidential policies issued by the corporation~~, or issued by the Residential Property and Casualty Joint Underwriting Association and renewed by the corporation,~~ which provides coverage for basic property perils on risks that are not located in areas eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas; and

(III) A coastal account for personal residential policies and commercial residential and commercial nonresidential property policies issued by the corporation~~, or transferred to the corporation,~~ which provides coverage for the peril of wind

on risks that are located in areas eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002. The corporation may offer policies that provide multiperil coverage and ~~the corporation~~ shall ~~continue to~~ offer policies that provide coverage only for the peril of wind for risks located in areas eligible for coverage in the coastal account. Effective July 1, 2014, the corporation shall cease offering new commercial residential policies providing multiperil coverage and shall instead continue to offer commercial residential wind-only policies, and may offer commercial residential policies excluding wind. The corporation may, however, continue to renew a commercial residential multiperil policy on a building that is insured by the corporation on June 30, 2014, under a multiperil policy. In issuing multiperil coverage, the corporation may use its approved policy forms and rates for the personal lines account. An applicant or insured who is eligible to purchase a multiperil policy from the corporation may purchase a multiperil policy from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides coverage only for the peril of wind from the corporation. An applicant or insured who is eligible for a corporation policy that provides coverage only for the peril of wind may elect to purchase or retain such policy and also purchase or retain coverage excluding wind from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides multiperil coverage from the corporation. It is the goal of the Legislature that there be an overall average savings of 10

percent or more for a policyholder who currently has a wind-only policy with the corporation, and an ex-wind policy with a voluntary insurer or the corporation, and who obtains a multiperil policy from the corporation. It is the intent of the Legislature that the offer of multiperil coverage in the coastal account be made and implemented in a manner that does not adversely affect the tax-exempt status of the corporation or creditworthiness of or security for currently outstanding financing obligations or credit facilities of the coastal account, the personal lines account, or the commercial lines account. The coastal account must also include quota share primary insurance under subparagraph (c)2. The area eligible for coverage under the coastal account also includes the area within Port Canaveral, which is bordered on the south by the City of Cape Canaveral, bordered on the west by the Banana River, and bordered on the north by Federal Government property.

b. The three separate accounts must be maintained as long as financing obligations entered into by the Florida Windstorm Underwriting Association or Residential Property and Casualty Joint Underwriting Association are outstanding, in accordance with the terms of the corresponding financing documents. If the financing obligations are no longer outstanding, the corporation may use a single account for all revenues, assets, liabilities, losses, and expenses of the corporation. Consistent with this subparagraph and prudent investment policies that minimize the cost of carrying debt, the board shall exercise its best efforts to retire existing debt or obtain the approval of necessary parties to amend the terms of existing debt, so as to structure the most efficient plan for consolidating ~~to consolidate~~ the

three separate accounts into a single account.

c. Creditors of the Residential Property and Casualty Joint Underwriting Association and the accounts specified in sub-sub-subparagraphs a.(I) and (II) may have a claim against, and recourse to, those accounts and no claim against, or recourse to, the account referred to in sub-sub-subparagraph a.(III). Creditors of the Florida Windstorm Underwriting Association have a claim against, and recourse to, the account referred to in sub-sub-subparagraph a.(III) and no claim against, or recourse to, the accounts referred to in sub-sub-subparagraphs a.(I) and (II).

d. Revenues, assets, liabilities, losses, and expenses not attributable to particular accounts shall be prorated among the accounts.

e. The Legislature finds that the revenues of the corporation are revenues that are necessary to meet the requirements set forth in documents authorizing the issuance of bonds under this subsection.

f. The income of the corporation may not inure to the benefit of any private person.

3. With respect to a deficit in an account:

a. After accounting for the Citizens policyholder surcharge imposed under sub-subparagraph i., if the remaining projected deficit incurred in the coastal account in a particular calendar year:

(I) Is not greater than 2 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the entire deficit shall be recovered through regular assessments of assessable insurers

under paragraph (q) and assessable insureds.

(II) Exceeds 2 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the corporation shall levy regular assessments on assessable insurers under paragraph (q) and on assessable insureds in an amount equal to the greater of 2 percent of the projected deficit or 2 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year. Any remaining projected deficit shall be recovered through emergency assessments under sub-subparagraph d.

b. Each assessable insurer's share of the amount being assessed under sub-subparagraph a. must be in the proportion that the assessable insurer's direct written premium for the subject lines of business for the year preceding the assessment bears to the aggregate statewide direct written premium for the subject lines of business for that year. The assessment percentage applicable to each assessable insured is the ratio of the amount being assessed under sub-subparagraph a. to the aggregate statewide direct written premium for the subject lines of business for the prior year. Assessments levied by the corporation on assessable insurers under sub-subparagraph a. must be paid as required by the corporation's plan of operation and paragraph (q). Assessments levied by the corporation on assessable insureds under sub-subparagraph a. shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932, and paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to that office.

Upon receipt of regular assessments from surplus lines agents, the Florida Surplus Lines Service Office shall transfer the assessments directly to the corporation as determined by the corporation.

c. After accounting for the Citizens policyholder surcharge imposed under sub-subparagraph i., the remaining projected deficits in the personal lines account and in the commercial lines account in a particular calendar year shall be recovered through emergency assessments under sub-subparagraph d.

d. Upon a determination by the board of governors that a projected deficit in an account exceeds the amount that is expected to be recovered through regular assessments under sub-subparagraph a., plus the amount that is expected to be recovered through surcharges under sub-subparagraph i., the board, after verification by the office, shall levy emergency assessments for as many years as necessary to cover the deficits, to be collected by assessable insurers and the corporation and collected from assessable insureds upon issuance or renewal of policies for subject lines of business, excluding National Flood Insurance policies. The amount collected in a particular year must be a uniform percentage of that year's direct written premium for subject lines of business and all accounts of the corporation, excluding National Flood Insurance Program policy premiums, as annually determined by the board and verified by the office. The office shall verify the arithmetic calculations involved in the board's determination within 30 days after receipt of the information on which the determination was based. The office shall notify assessable insurers and the Florida Surplus Lines Service Office of the date on which

assessable insurers shall begin to collect and assessable insureds shall begin to pay such assessment. The date must be at least ~~may be not less than~~ 90 days after the date the corporation levies emergency assessments pursuant to this sub-subparagraph. Notwithstanding any other provision of law, the corporation and each assessable insurer that writes subject lines of business shall collect emergency assessments from its policyholders without such obligation being affected by any credit, limitation, exemption, or deferment. Emergency assessments levied by the corporation on assessable insureds shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932 and paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to that office. The emergency assessments collected shall be transferred directly to the corporation on a periodic basis as determined by the corporation and held by the corporation solely in the applicable account. The aggregate amount of emergency assessments levied for an account ~~under this sub-subparagraph~~ in any calendar year may be less than but may not exceed the greater of 10 percent of the amount needed to cover the deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit, or 10 percent of the aggregate statewide direct written premium for subject lines of business and all accounts of the corporation for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the deficit.

e. The corporation may pledge the proceeds of assessments, projected recoveries from the Florida Hurricane Catastrophe

Fund, other insurance and reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as the source of revenue for and to secure bonds issued under paragraph (q), bonds or other indebtedness issued under subparagraph (c)3., or lines of credit or other financing mechanisms issued or created under this subsection, or to retire any other debt incurred as a result of deficits or events giving rise to deficits, or in any other way that the board determines will efficiently recover such deficits. The purpose of the lines of credit or other financing mechanisms is to provide additional resources to assist the corporation in covering claims and expenses attributable to a catastrophe. As used in this subsection, the term "assessments" includes regular assessments under sub-subparagraph a. or subparagraph (q)1. and emergency assessments under sub-subparagraph d. Emergency assessments collected under sub-subparagraph d. are not part of an insurer's rates, are not premium, and are not subject to premium tax, fees, or commissions; however, failure to pay the emergency assessment shall be treated as failure to pay premium. The emergency assessments ~~under sub-subparagraph d.~~ shall continue as long as any bonds issued or other indebtedness incurred with respect to a deficit for which the assessment was imposed remain outstanding, unless adequate provision has been made for the payment of such bonds or other indebtedness pursuant to the documents governing such bonds or indebtedness.

f. As used in this subsection for purposes of any deficit incurred on or after January 25, 2007, the term "subject lines of business" means insurance written by assessable insurers or procured by assessable insureds for all property and casualty

lines of business in this state, but not including workers' compensation or medical malpractice. As used in this sub-subparagraph, the term "property and casualty lines of business" includes all lines of business identified on Form 2, Exhibit of Premiums and Losses, in the annual statement required of authorized insurers under s. 624.424 and any rule adopted under this section, except for those lines identified as accident and health insurance and except for policies written under the National Flood Insurance Program or the Federal Crop Insurance Program. For purposes of this sub-subparagraph, the term "workers' compensation" includes both workers' compensation insurance and excess workers' compensation insurance.

g. The Florida Surplus Lines Service Office shall determine annually the aggregate statewide written premium in subject lines of business procured by assessable insureds and report that information to the corporation in a form and at a time the corporation specifies to ensure that the corporation can meet the requirements of this subsection and the corporation's financing obligations.

h. The Florida Surplus Lines Service Office shall verify the proper application by surplus lines agents of assessment percentages for regular assessments and emergency assessments levied under this subparagraph on assessable insureds and assist the corporation in ensuring the accurate, timely collection and payment of assessments by surplus lines agents as required by the corporation.

i. ~~In 2008 or thereafter,~~ Upon ~~a~~ determination by the board of governors that an account has a projected deficit, the board shall levy a Citizens policyholder surcharge against all

policyholders of the corporation.

(I) The surcharge shall be levied as a uniform percentage of the premium for all corporation policyholders ~~for the policy~~ of up to 10 percent of the policy premium for deficits in the personal lines account, up to 15 percent of the policy ~~such~~ premium for deficits in the commercial lines account, and up to 20 percent of the policy premium for deficits in the coastal account, which funds shall be used to offset the deficit.

(II) The surcharge is payable upon cancellation or termination of the policy, upon renewal of the policy, or upon issuance of a new policy by the corporation within the first 12 months after the date of the levy or the period of time necessary to fully collect the surcharge amount.

(III) The corporation may not levy any regular assessments under paragraph (q) pursuant to sub-subparagraph a. or sub-subparagraph b. with respect to a particular year's deficit until the corporation has first levied the full amount of the surcharge authorized by this sub-subparagraph.

(IV) The surcharge is not considered premium and is not subject to commissions, fees, or premium taxes. However, failure to pay the surcharge shall be treated as failure to pay premium.

j. If the amount of any assessments or surcharges collected from corporation policyholders, assessable insurers or their policyholders, or assessable insureds exceeds the amount of the deficits, such excess amounts shall be remitted to and retained by the corporation in a reserve to be used by the corporation, as determined by the board of governors and approved by the office, to pay claims or reduce any past, present, or future plan-year deficits or to reduce outstanding debt.

(e) The corporation is subject to s. 287.057 for the purchase of commodities and contractual services except as otherwise provided in this paragraph. Services provided by tradepersons or technical experts to assist a licensed adjuster in the evaluation of individual claims are not subject to the procurement requirements of this section. Additionally, the procurement of financial services providers and underwriters must be made pursuant to s. 627.3513. Contracts for goods or services valued at or more than $100,000 are subject to approval by the board.

1. The corporation is an agency for purposes of s. 287.057, except that, for purposes of s. 287.057(22), the corporation is an eligible user.

a. The authority of the Department of Management Services and the Chief Financial Officer under s. 287.057 extends to the corporation as if the corporation were an agency.

b. The executive director of the corporation is the agency head under s. 287.057, except for resolution of bid protests for which the board would serve as the agency head.

2. The corporation must provide notice of a decision or intended decision concerning a solicitation, contract award, or exceptional purchase by electronic posting. Such notice must contain the following statement: "Failure to file a protest within the time prescribed in this section constitutes a waiver of proceedings."

a. A person adversely affected by the corporation's decision or intended decision to award a contract pursuant to s. 287.057(1) or (3)(c) who elects to challenge the decision must file a written notice of protest with the executive director of

the corporation within 72 hours after the corporation posts a notice of its decision or intended decision. For a protest of the terms, conditions, and specifications contained in a solicitation, including ~~any~~ provisions governing the methods for ranking bids, proposals, replies, awarding contracts, reserving rights of further negotiation, or modifying or amending any contract, the notice of protest must be filed in writing within 72 hours after ~~the~~ posting ~~of~~ the solicitation. Saturdays, Sundays, and state holidays are excluded in the computation of the 72-hour time period.

b. A formal written protest must be filed within 10 days after the date the notice of protest is filed. The formal written protest must state with particularity the facts and law upon which the protest is based. Upon receipt of a formal written protest that has been timely filed, the corporation must stop the solicitation or contract award process until the subject of the protest is resolved by final board action unless the executive director sets forth in writing particular facts and circumstances that require the continuance of the solicitation or contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare.

(I) The corporation must provide an opportunity to resolve the protest by mutual agreement between the parties within 7 business days after receipt of the formal written protest.

(II) If the subject of a protest is not resolved by mutual agreement within 7 business days, the corporation's board must transmit the protest to the Division of Administrative Hearings and contract with the division to conduct a hearing to determine

the merits of the protest and to issue a recommended order ~~place the protest on the agenda and resolve it at its next regularly scheduled meeting~~. The contract must provide for the corporation to reimburse the division for any costs incurred by the division for court reporters, transcript preparation, travel, facility rental, and other customary hearing costs in the manner set forth in s. 120.65(9). The division has jurisdiction to determine the facts and law concerning the protest and to issue a recommended order. The division's rules and procedures apply to these proceedings; the division's applicable bond requirements do not apply. The protest must be heard by the division ~~board~~ at a publicly noticed meeting in accordance with procedures established by the division ~~board~~.

c. In a protest of an invitation-to-bid or request-for-proposals procurement, submissions made after the bid or proposal opening which amend or supplement the bid or proposal may not be considered. In protesting an invitation-to-negotiate procurement, submissions made after the corporation announces its intent to award a contract, reject all replies, or withdraw the solicitation that amends or supplements the reply may not be considered. Unless otherwise provided by law, the burden of proof rests with the party protesting the corporation's action. In a competitive-procurement protest, other than a rejection of all bids, proposals, or replies, the corporation's board must conduct a de novo proceeding to determine whether the corporation's proposed action is contrary to the corporation's governing statutes, the corporation's rules or policies, or the solicitation specifications. The standard of proof for the proceeding is whether the corporation's action was clearly

erroneous, contrary to competition, arbitrary, or capricious. In any bid-protest proceeding contesting an intended corporation action to reject all bids, proposals, or replies, the standard of review by the board is whether the corporation's intended action is illegal, arbitrary, dishonest, or fraudulent.

d. Failure to file a notice of protest or failure to file a formal written protest constitutes a waiver of proceedings.

3. The board, acting as agency head, shall consider the recommended order of an administrative law judge in a public meeting and take final action on the protest. ~~Contract actions and decisions by the board under this paragraph are final.~~ Any further legal remedy lies with the First District Court of Appeal ~~must be made in the Circuit Court of Leon County~~.

(hh) The corporation shall ~~must~~ prepare a report for each calendar year outlining both the statewide average and county-specific details of the loss ratio attributable to losses that are not catastrophic losses for residential coverage provided by the corporation, which information must be presented to the office and available for public inspection on the Internet website of the corporation by March 1 ~~January 15th~~ of the following calendar year.

Section 3. Paragraph (e) is added to subsection (1) of section 627.3518, Florida Statutes, subsection (2) and paragraph (e) of subsection (4) of that section are amended, present subsections (5) through (10) of that section are redesignated as subsections (6) through (11), respectively, present subsection (11) is redesignated as subsection (13), new subsections (5) and (12) are added to that section, and present subsections (5) through (7) of that section are amended, to read:

627.3518 Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.—The purpose of this section is to provide a framework for the corporation to implement a clearinghouse program by January 1, 2014.

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

(e) "Surplus lines insurer" means an unauthorized insurer that has been made eligible by the office to issue coverage under the Surplus Lines Law.

(2) In order to confirm eligibility with the corporation and to enhance the access of new applicants for coverage and existing policyholders of the corporation to offers of coverage from authorized insurers and surplus lines insurers, the corporation shall establish a program for personal residential risks in order to facilitate the diversion of ineligible applicants and existing policyholders ~~from the corporation~~ into the voluntary insurance market. The corporation shall also develop appropriate procedures for facilitating the diversion of ineligible applicants and existing policyholders for commercial residential coverage into the private insurance market and implement these procedures by October 1, 2015 ~~shall report such procedures to the President of the Senate and the Speaker of the House of Representatives by January 1, 2014~~.

(4) Any authorized insurer may participate in the program; however, participation is not mandatory for any insurer. Insurers making offers of coverage to new applicants or renewal policyholders through the program:

(e) May participate through their single-designated managing general agent or broker; however, the provisions of paragraph (7)(a) ~~(6)(a)~~ regarding ownership, control, and use of

the expirations continue to apply.

(5) Effective January 1, 2015, an eligible surplus lines insurer may make an offer of similar coverage on a risk submitted though the clearinghouse program if no offers of coverage were submitted by authorized insurers participating in the program and the office determines that the eligible surplus lines insurer:

(a) Maintains a surplus of $50 million on a company or pooled basis;

(b) Is rated as having a superior, excellent, exceptional, or equally comparable financial strength by a rating agency acceptable to the office;

(c) Maintains reserves, surplus, reinsurance, and reinsurance equivalents to cover the eligible surplus lines insurer's 100-year probable maximum hurricane loss at least twice in a single hurricane season, and submits such reinsurance to the office for review for purposes of participation in the program; and

(d) Provides prominent notice to the policyholder:

1. That the policyholder does not have to accept an offer of coverage from a surplus lines insurer;

2. That an offer of coverage from a surplus lines insurer does not affect whether the policyholder is eligible for coverage from the corporation;

3. That a policyholder who accepts an offer of coverage from a surplus lines insurer may, at any time, submit a new application for coverage to the corporation;

4. That surplus lines policies are not covered by the Florida Insurance Guaranty Association;

5. That rates for surplus lines insurance are not subject to review by the office; and

6. Of any additional information required by the office.

Such notice must be signed by the policyholder and kept on file with the surplus lines insurer for as long as the policyholder remains insured by the surplus lines insurer.

(6)~~(5)~~ Notwithstanding s. 627.3517, an ~~any~~ applicant for new coverage from the corporation is not eligible for coverage from the corporation if provided an offer of coverage from an authorized insurer through the program at a premium that is at or below the eligibility threshold established in s. 627.351(6)(c)5.a. or b. Whenever an offer of coverage for a personal lines or commercial lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer through the program, if the offer is equal to or less than the corporation's renewal premium for comparable coverage, the risk is not eligible for coverage with the corporation. If ~~In the event~~ an offer of coverage for a new applicant is received from an authorized insurer through the program, and the premium offered exceeds the eligibility threshold contained in s. 627.351(6)(c)5.a. or b., the applicant or insured may elect to accept such coverage, or may elect to accept or continue coverage with the corporation. If ~~In the event~~ an offer of coverage for a personal lines or commercial lines residential risk is received from an authorized insurer at renewal through the program~~,~~ and if the premium offered is more than the corporation's renewal premium for comparable coverage, the insured may elect to accept such coverage~~,~~ or may elect to

accept or continue coverage with the corporation. Section 627.351(6)(c)5.a.(I) or b.(I) does not apply to an offer of coverage from an authorized insurer obtained through the program. An applicant for personal lines residential coverage from the corporation who was declared ineligible for coverage at renewal by the corporation in the previous 36 months due to an offer of coverage pursuant to this subsection is ~~shall be~~ considered a renewal under this section if the corporation determines that the authorized insurer making the offer of coverage pursuant to this subsection continues to insure the applicant and increased the rate on the policy in excess of the increase allowed for the corporation under s. 627.351(6)(n)6.

(7)~~(6)~~ Independent insurance agents submitting new applications for coverage or that are the agent of record on a renewal policy submitted to the program:

(a) Are granted and must maintain ownership and the exclusive use of expirations, records, or other written or electronic information directly related to such applications or renewals written through the corporation or through an insurer participating in the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and (II)(B) and b.(I)(B) and (II)(B). Such ownership is granted for as long as the insured remains with the agency or until sold or surrendered in writing by the agent. Contracts with the corporation or required by the corporation must not amend, modify, interfere with, or limit such rights of ownership. Such expirations, records, or other written or electronic information may be used to review an application, issue a policy, or for any other purpose necessary for placing such business through the program.

(b) May not be required to be appointed by any insurer participating in the program for policies written solely through the program, notwithstanding ~~the provisions of~~ s. 626.112.

(c) May accept an appointment from an ~~any~~ insurer participating in the program.

(d) May enter into ~~either~~ a standard or limited agency agreement with the insurer, at the insurer's option.

Applicants ineligible for coverage in accordance with subsection (6) ~~(5)~~ remain ineligible if their independent agent is unwilling or unable to enter into a standard or limited agency agreement with an insurer participating in the program.

(8)~~(7)~~ Exclusive agents submitting new applications for coverage or that are the agent of record on a renewal policy submitted to the program:

(a) Must maintain ownership and the exclusive use of expirations, records, or other written or electronic information directly related to such applications or renewals written through the corporation or through an insurer participating in the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and (II)(B) and b.(I)(B) and (II)(B). Contracts with the corporation or required by the corporation must not amend, modify, interfere with, or limit such rights of ownership. Such expirations, records, or other written or electronic information may be used to review an application, issue a policy, or for any other purpose necessary for placing such business through the program.

(b) May not be required to be appointed by any insurer participating in the program for policies written solely through the program, notwithstanding ~~the provisions of~~ s. 626.112.

(c) Must only facilitate the placement of an offer of coverage from an insurer whose limited servicing agreement is approved by that exclusive agent's exclusive insurer.

(d) May enter into a limited servicing agreement with the insurer making an offer of coverage, and only after the exclusive agent's insurer has approved the limited servicing agreement terms. The exclusive agent's insurer must approve a limited service agreement for the program for an ~~any~~ insurer for which it has approved a service agreement for other purposes.

Applicants ineligible for coverage in accordance with subsection (6) ~~(5)~~ remain ineligible if their exclusive agent is unwilling or unable to enter into a standard or limited agency agreement with an insurer making an offer of coverage to that applicant.

(12) An applicant for coverage from the corporation who was a policyholder of the corporation within the previous 36 months and who subsequently accepted an offer of coverage from a surplus lines insurer is considered a renewal under this section.

Section 4. Section 627.3519, Florida Statutes, is repealed.

Section 5. Section 627.35191, Florida Statutes, is amended to read:

627.35191 Required reports ~~Annual report of aggregate net probable maximum losses, financing options, and potential assessments~~.—

(1) By ~~No later than~~ February 1 of each year, the Florida Hurricane Catastrophe Fund and Citizens Property Insurance Corporation shall each submit a report to the Legislature and the Financial Services Commission identifying their respective

aggregate net probable maximum losses, financing options, and potential assessments. The report issued by the fund and the corporation must include their respective 50-year, 100-year, and 250-year probable maximum losses; analysis of all reasonable financing strategies for each such probable maximum loss, including the amount and term of debt instruments; specification of the percentage assessments that would be needed to support each of the financing strategies; and calculations of the aggregate assessment burden on Florida property and casualty policyholders for each of the probable maximum losses.

(2) In May of each year, Citizens Property Insurance Corporation shall also provide to the Legislature and the Financial Services Commission a statement of the estimated borrowing capacity of the corporation for the next 12-month period, the estimated claims-paying capacity of the corporation, and the corporation's estimated balance as of December 31 of the current calendar year. Such estimates must take into account that the corporation, the Florida Hurricane Catastrophe Fund, and the Florida Insurance Guaranty Association may all be concurrently issuing debt instruments following a catastrophic event.

Section 6. Effective January 1, 2015, subsection (7) of section 627.701, Florida Statutes, is amended to read:

627.701 Liability of insureds; coinsurance; deductibles.—

(7) Before ~~Prior to~~ issuing a personal lines residential property insurance policy on or after January 1, 2015 ~~April 1, 1997~~, or before ~~prior to~~ the first renewal of a residential property insurance policy on or after January 1, 2015 ~~April 1, 1997~~, the insurer must offer a deductible equal to $1,000 ~~$500~~

applicable to losses from perils other than hurricane. The insurer must provide the policyholder with notice of the availability of the deductible specified in this subsection in a form approved by the office at least once every 3 years. The failure to provide such notice constitutes a violation of this code but does not affect the coverage provided under the policy. An insurer may require a higher deductible only as part of a deductible program lawfully in effect on June 1, 1996, or as part of a similar deductible program.

Section 7. Present subsections (6) through (8) of section 627.711, Florida Statues, are renumbered as subsections (7) through (9), respectively, a new subsection (6) is added to that section, and present subsection (8) of that section is amended, to read:

627.711 Notice of premium discounts for hurricane loss mitigation; uniform mitigation verification inspection form.—

(6)(a) An authorized mitigation inspector may not directly or indirectly offer or deliver any compensation, inducement, or reward to an insurance agency, insurance agent, customer representative, or an employee of an insurance agency for the referral of the owner of the inspected property to the inspector or the inspection company. Section 455.227(1)(k) applies to applicable licensees in violation of this paragraph.

(b) An insurance agency, insurance agent, customer representative, or an employee of an insurance agency may not directly or indirectly receive or accept any compensation, inducement, or reward from an authorized mitigation inspector for the referral of the owner of the inspected property to the inspector or the inspection company. Sections 626.621(2) and

626.6215(5)(d) apply to a violation of this paragraph.

(9)~~(8)~~ At its expense, the insurer may require that a uniform mitigation verification form provided by a policyholder, a policyholder's agent, or an authorized mitigation inspector or inspection company be independently verified by an inspector, an inspection company, or an independent third-party quality assurance provider that ~~which~~ possesses a quality assurance program before accepting the uniform mitigation verification form as valid. At its option, the insurer may exempt from independent verification a uniform mitigation verification form completed by an authorized mitigation inspector or inspection company that possesses a quality assurance program approved by the insurer. A uniform mitigation verification form provided by a policyholder, a policyholder's agent, or an authorized mitigation inspector or inspection company to Citizens Property Insurance Corporation is not subject to independent verification and the property is not subject to reinspection by the corporation, absent material changes to the structure during the term stated on the form, if the form was signed by an authorized mitigation inspector and submitted to, reviewed by, and verified by a quality assurance program approved by the corporation before submission of the form to the corporation.

Section 8. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2014.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 870
INTRODUCER:	Judiciary Committee and Senator Smith
SUBJECT:	Insurance
DATE:	April 17, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	**Favorable**
2.	Brown	Cibula	JU	**Fav/CS**
3.	Billmeier	Phelps	RC	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 870 revises provisions in insurance law, addressing property, casualty, and surety policies; long-term care medical policies; personal injury protection through the Florida Motor Vehicle No-Fault Law; and reciprocal insurance.

Current law provides that property, casualty, and surety insurers do not assume direct liability unless the policy or contract of insurance is countersigned by a licensed agent for the insurer. This bill provides that the absence of a countersignature by an agent of the insurer does not affect the validity of a property, casualty, or surety insurance policy or contract. This change may reduce the risk that an insured loses coverage due to events the insured cannot control.

Current law requires insurers of long-term care policies to offer a nonforfeiture protection provision. The bill specifies that an insurer may offer a nonforfeiture provision in a long-term care insurance policy in the form of a return of the insured's premium if the insured dies, surrenders, or cancels the policy.

The Florida Insurance Guaranty Association (FIGA) provides a mechanism for payment of covered claims of an insolvent property and casualty insurer. After an insurer enters insolvency, FIGA is authorized to levy both regular assessments and emergency assessments levied in the event of a hurricane. The bill:

- Creates a uniform assessment percentage to be collected from policyholders. The collection must begin at least 90 days after the certification of the assessment.

- Authorizes FIGA to use a monthly installment method for the collection of assessments from insurers in addition to the current pay and recoup method, streamlines the reconciliation of collections, and eliminates a regulatory filing with the OIR.
- Codifies the OIR's interpretation of an admissible asset for purposes of statutory accounting treatment of FIGA assessments.

This bill amends the Florida Motor Vehicle No-Fault Law (Law) by enabling local counties to enact and enforce ordinances regulating health-care clinics that are reimbursed under the Law.

Current law authorizes the practice of reciprocal insurance, a grouping of subscribers offering an interexchange of reciprocal agreements of indemnity. This bill authorizes a reciprocal insurer to distribute up to 10 percent of surplus to its subscribers, capping the distribution at 50 percent of net income from the prior calendar year.

II. Present Situation:

Countersignature Requirement on Property, Casualty, and Surety Policies

Section 624.425(1), F.S., requires all property, casualty, and surety insurance policies or contracts to be issued and countersigned by an agent. The agent must be regularly commissioned, currently licensed, and appointed as an agent for the insurer.

The purpose of the countersignature requirement is "to protect the public … by requiring such policies to be issued by resident, licensed agents over whom the state can exercise control and thus prevent abuses."[1]

The absence of a countersignature does not necessarily invalidate the insurance policy. The insurer may waive the countersignature requirement.[2] If the countersignature requirement is not waived, a policy is not enforceable against the insurer, as a court will not consider the policy properly executed.[3] In the absence of a countersignature, whether a policy is waived is a factual matter determined on a case-by-case basis.[4] In at least one recent case, a defendant argued that the lack of a countersignature constituted a defense in a breach of contract action.[5]

Section 624.426, F.S., excludes some policies from the countersignature requirement. These are:
- Contracts of reinsurance;
- Policies of insurance on the rolling stock of railroad companies doing a general freight and passenger business;
- United States Custom surety bonds issued by a corporate surety approved by the United States Department of Treasury;

[1] *Wolfe v. Aetna Insurance Company*, 436 So. 2d 997, 999 (Fla. 5th DCA 1983).
[2] *See Meltsner v. Aetna Casualty and Surety Company of Hartford, Conn.*, 233 So. 2d 849, 850 (Fla. 3rd DCA 1969) (holding under the facts of that case that the countersignature requirement was waived).
[3] 43 AM. JUR. 2d Insurance s. 225.
[4] *See Meltsner*, 233 So. 2d at 850 (finding a waiver of the countersignature requirement); *Wolfe*, 436 So. 2d at 999 (finding a waiver of the countersignature requirement).
[5] *See FCCI Insurance Company v. Gulfwind Companies, LLC*, 2003 CC 003056 NC (Fla. Sarasota County Court).

- Policies of insurance issued by insurers whose agents represent one company or a group of companies under common ownership if a company within one group is transferring policies to another company within the same group and the agent of record remains the same; and
- Policies of property, casualty, and surety insurance issued by insurers whose agents represent one company or a group of companies under common ownership and for which the application is lawfully submitted to the insurer.[6]

The Florida Insurance Guaranty Association and Assessments on Property and Casualty Insurance

Part II of ch. 631, Florida Statutes., governs the Florida Insurance Guaranty Association (FIGA), a nonprofit corporation, created to provide a mechanism for the payment of covered claims, including unearned premiums, of insolvent property and casualty insurance companies.[7] Property and casualty insurance companies [8] doing business in Florida are required to be members of FIGA as a condition of their authority to transact insurance.[9] When a property and casualty insurance company becomes insolvent, FIGA is required to assume the claims of the insurer and pay the claims of the company's policyholders, which include claims on residential and commercial property insurance, automobile insurance, and liability insurance, among others.

The maximum claim amount FIGA will cover is $300,000, but special limits apply to damages to structure and contents on homeowners, condominiums, and homeowners' association claims. For damages to structure and contents on homeowners' claims, FIGA covers an additional $200,000, for a total of $500,000. For condominium and homeowners' association claims, FIGA covers the lesser of policy limits or $100,000 multiplied by the number of units in the association.

FIGA Funding and Assessments

In order to pay the remaining covered claims and maintain the operations of an insolvent insurer, FIGA has several potential funding sources. For example, FIGA receives funds that are available from distributions of the estate of the insolvent insurance company. The Division of Rehabilitation and Liquidation in the Department of Financial Services is responsible for the liquidation of assets of insolvent insurance companies.[10] In addition, FIGA also obtains funds from the liquidation of assets of insolvent insurers domiciled in other states, but having claims in Florida.

After insolvency occurs, FIGA is authorized to levy assessments against Florida member insurance companies under two separate statutory provisions. Under s. 631.57(3)(a), F.S., FIGA is authorized to levy an assessment as necessary for up to 2 percent of an insurer's net written premium for the kind of insurance included in the account for which the assessment is levied. This assessment is known as the "regular assessment." The second assessment is an emergency assessment authorized under s. 631.57(3)(e), F.S., which may be levied only to pay covered

[6] Section 624.426, F.S.
[7] Section 631.51, F.S.
[8] Workers' compensation insurance is excluded from FIGA since the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) pays covered claims under chapter 440, F.S., Florida's Workers' Compensation Law.
[9] Section 631.55(1), F.S.
[10] Typically, insurers are placed into liquidation when the company is insolvent and the goal of liquidation is to dissolve the insurance company. *See* s. 631.061, F.S., for the grounds for liquidation.

claims of an insurer that was rendered insolvent by the effects of a hurricane. At the discretion of FIGA, emergency assessments are payable in 12 monthly installments or in a single payment. The emergency assessment is capped at 2 percent of an insurer's net direct written premiums in Florida for the calendar year preceding the assessment.

Section 631.57(3), F.S., provides the procedure used by FIGA to levy both regular and emergency assessments on member insurance companies and the procedure used by member insurance companies to pass the assessment on to their policyholders. The procedures are generally the same for regular and emergency assessments:

1. FIGA determines that an assessment is needed to pay claims or administration costs, or to pay bonds issued by FIGA.
2. FIGA certifies the need for an assessment levy to the OIR.
3. The OIR reviews the certification, and if it is sufficient, the OIR issues an order to all insurance companies subject to the FIGA assessment to pay their assessment to FIGA.
4. Regular assessments must be paid by the insurance companies within 30 days of the levy, and emergency assessments can be paid either in one payment at the end of that month, or spread out over 12 months, at the option of FIGA.
5. For both types of assessments, once an insurance company pays the assessment to FIGA, it may begin to recoup the assessment from its policyholders at the policy issuance or renewal.[11]

An insurer must submit an informational filing to the OIR at least 15 days before applying the recoupment factor to any policies. The factor is applied to policies issued or renewed by the insurer for 1 year under the affected lines of insurance. The 15-day requirement also applies if the insurer needs to continue applying the recoupment factor for an additional year. The factor is calculated to provide for the probable recoupment of assessments over a 1-year period, unless an insurer elects to recoup the assessment over a longer period. If the excess amount does not exceed 15 percent of the total assessment paid, the excess amount is remitted to FIGA within 60 days after the end of the 1-year period in which the excess recoupment charges were collected. Any excess recoupments remitted to FIGA are used to reduce future assessments. If the excess amount exceeds 15 percent of the total assessment paid, the excess amount is required to be returned to an insurer's current policyholders by refunds or premium credits.

The assessment has been 4 percent just twice, in 1993 and 2006, in the 43-year history of FIGA.[12] Insurers pay the assessments up front and recoup the assessment from policyholders upon issuance or renewal of the policies.

Part II of ch. 631, F.S., provides a limited exception to the assessment. Subject to regulatory approval, an insurer may be exempted from any regular or emergency assessment if an assessment will result in the insurer's financial statement reflecting an amount of capital or

[11] If an insurer's book of business is declining during the recoupment period, the assessment factor will be insufficient to recoup the total amount of assessment paid to FIGA. In those circumstances, the insurance company must continue to collect the assessment from policyholders beyond 12 months, until the assessment is recouped in full.

[12] This occurred in 1993 following Hurricane Andrew and in 2006 following Hurricane Wilma and the other storms of the 2004/2005 hurricane seasons.

surplus less than the sum required by any jurisdiction in which the insurer is authorized to transact insurance.[13]

Accounting for Assessments

Statutory accounting principles (SAP) govern the preparation of an insurer's annual statement, which is filed with the state regulator, the OIR. The SAP is characterized as a more conservative approach as the SAP measures the ability to pay claims in the future. In contrast, other users, such as shareholders, bondholders, banks, credit rating agencies, and the Securities and Exchange Commission, may require financial statements that are prepared in accordance with generally accepted accounting principles (GAAP). The GAAP financial statements attempt to match revenues to expenses.[14] The OIR requires insurers to file annual SAP statements and independently audited financial reports.[15]

In some respects, GAAP differs from SAP in the treatment of certain transactions, such as FIGA assessments. Under both accounting methods, a liability is recognized. However, SAP allows recognition of an asset for the amount that is likely to be recovered from future premium surcharges for an assessment, which offsets or eliminates the negative effect on statutory surplus.[16] For purposes of GAAP, the assessment recoverable from future premium writings does not qualify as an asset,[17] resulting in a reduction of retained earnings in the period an assessment is levied. The impact of the assessment on GAAP financial statements is essentially a timing issue; retained earnings are reduced in the year the assessment is paid and increased the following year as the assessment is recouped from policyholders.

Nonforfeiture Provision in Long-term Care Insurance Policies

A long-term care insurance policy is defined in law as:

> Any insurance policy or rider … designed to provide coverage on an expense-incurred, indemnity, prepaid, or other basis for one or more necessary or medically necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, rehabilitative, maintenance, or personal care services provided in a setting other than an acute care unit of a hospital.[18]

Insurers who offer long-term care policies must offer a nonforfeiture protection provision providing reduced paid-up insurance, extended term, shortened benefit period, or any other benefits approved by the Office of Insurance Regulation.[19]

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[13] Section 631.57(4), F.S.
[14] The Financial Accounting Standards Board (FASB) Accounting Standards Codification is the single source of authoritative nongovernmental U.S. Generally Accepted Accounting Principles (GAAP), http://www.fasb.org/jsp/FASB/Page/SectionPage&cid=1176154526495 (last visited April 1, 2014).
[15] Section 624.424, F.S.
[16] *See* Thomas Howell Ferguson P.A., *Accounting for Guaranty Fund Assessments*, memorandum to Sandy Robinson at FIGA, December 3. 2013, (on file with the Senate Committee on Banking and Insurance).
[17] Asset recognition is measured based on projected future premium collections or policy surcharges from in-force policies, excluding expected renewals of short-duration contracts, which would disqualify the assessment future recoverable as an asset.
[18] Section 627.9404(1), F.S.
[19] Section 627.94072(2), F.S.

Personal Injury Protection/Florida Motor Vehicle No-Fault Law

The Florida Motor Vehicle No-Fault Law (PIP) is contained in Sections 627.730 through 627.7405, F.S. The PIP law provides for medical, surgical, funeral, and disability insurance benefits without regard to fault, and mandates insurance on all motor vehicles required to be registered. PIP provisions also limit damages for pain, suffering, mental anguish, and inconvenience.[20] The overall purpose of the PIP law is to ensure swift payment of valid claims without requiring formal legal action.[21]

Still, since the inception of PIP, problems have emerged, including significant allegations of fraudulent claims and an exponential increase in litigation, the opposite intended effect from the legislation.

> According to Florida's Office of Insurance Regulation the number of PIP claims opened or recorded in 2010 had increased 28% since 2006. As for lawsuits filed in Florida, the number of PIP lawsuits pending at year-end increased by 387% from 2006 to 2010, with the number of lawsuits settled during the year increasing by 315%. The number of procedures billed per claim and the total amount of charges per claim have likewise increased from 2006.[22]

The Hillsborough County Commission adopted a series of ordinances between 2011 and 2012 to address some of the concerns about fraudulent billing. Plaintiffs challenged one of the ordinances specifically designed to stem the "rapid increase in personal injury protection insurance fraud occurring within Hillsborough County."[23] The Court indicated that:

> According to the plain language of the Florida Statutes, the Plaintiffs, licensed professional or "physicians" licensed pursuant to Chapters 456, 458, 459, or 460, Florida Statutes, *may* operate or perform medical services at their AHCA Licensed Health Care Clinics under state law, while Ordinance 11-13, as amended by Ordinance 12-6, makes such operation illegal, after a clinic has had its license denied.[24]

In its review of Florida law, the court determined that the Legislature intended to entirely preempt the field of health care licensing.[25] Therefore, a county has no authority to determine who may practice as a healthcare provider, in any circumstance.[26]

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[20] Section 27.731, F.S.
[21] Mark J. Rose, *Florida's No-Fault Law and the 2012 Statutory Amendments*, 31 NO. 3 TRIAL ADVOC. Q. 23, 23 (summer 2012).
[22] *Id*. at 23 [citations omitted].
[23] *Doctor's Pain Management Group v. Hillsborough County*, Case Nos.: 11-012935, 11-013630, and 11-CA-013039 (Fla. 13th Cir. Ct. 2013) (pg. 9). The ordinance in question is Ordinance 11-13, which required medical clinics primarily offering treatment to auto accident injuries to obtain a license.
[24] *Id*. at 11.
[25] *Id*.
[26] *Id*. at 13.

Reciprocal Insurance

Reciprocal insurance is insurance resulting from an interexchange of subscribers of reciprocal agreements of indemnity, effected through a designated attorney.[27] Reciprocal insurers can transact any kind of insurance except life or title insurance.[28] Florida law requires reciprocal insurers to have and maintain surplus funds of at least $250,000, and an expendable surplus of at least $750,000.[29] Reciprocal insurers may return to subscribers unused premiums, savings, or credits accruing to their accounts.[30]

III. Effect of Proposed Changes:

CS/SB 870 revises provisions in insurance law, addressing property, casualty, and surety policies; long-term care medical policies; and personal injury protection through the Florida Motor Vehicle No-Fault Law.

Assessments on Property and Casualty Insurance Policies

The bill significantly revises the assessment process for regular and emergency assessments.

In the OIR order levying the assessment, the bill requires the office to specify the assessment percentage to be collected uniformly from all assessable policyholders for the assessment year. The order must also specify the start of the assessment year, which is a 12-month period that may start on the first day of each quarter, beginning January 1. The assessment year is the 12 month period during which FIGA assessments are recouped or collected from assessable policyholders.

Insurers are required to make an initial payment to FIGA before the beginning of the assessment year, on or before the date specified in the order. The initial payment made by insurers who wrote insurance in the preceding calendar year is based on the net direct written premiums of the prior year multiplied by the uniform percentage. The initial payment made by insurers that did not write in the prior calendar year is based on a good faith estimate of the anticipated premiums that would be written for the assessment year, multiplied by the uniform percentage of premium. Currently, an insurer's prior year market share is used as a basis for determining an insurer's total assessment. The insurer calculates the recoupment factor to provide for the probable recoupment in 1 year.

The bill authorizes FIGA to use a monthly installment method for the collection of assessments from policyholders by insurers. The monthly installment method may also be used in combination with the method requiring insurers to make an initial payment to FIGA and subsequently recoup that payment from policyholders. The bill provides FIGA with the discretion to use the installment plan based on FIGA's projected cash flow. If FIGA projects that it has cash on hand for the payment of expected claims in the applicable account for 6 months, FIGA may recommend a monthly assessment instead of a single payment.

[27] Section 629.011, F.S.
[28] Section 629.041(1), F.S.
[29] Section 629.071, F.S.
[30] Section 629.271, F.S.

Once the OIR issues an order requiring insurers to pay an assessment, insurers may begin collecting assessments from policyholders for the assessment year. The initial collection start date must be at least 90 days after the FIGA board certifies the need for an assessment. Under the current collection method, an insurer generally remits the regular assessment within 30 days of the levy; however, the emergency assessment currently may be payable as a single payment or in 12 monthly installments, at FIGA's option.

Insurers are required to file a reconciliation report with FIGA within 45 days after the end of the assessment year, indicating the amount of the initial payment to FIGA, whether the payment was based on prior year premiums or a good faith projection, the amounts collected. Reconciliation reports are subject to s. 626.9541(1)(e), F.S. Insurers are required to complete and submit a payment reconciliation to FIGA within 90 days after the end of the assessment year. If an insurer's collections exceed the initial payment to FIGA, the insurer will remit the excess amount to FIGA. If an insurer's collections are less than the initial payment to FIGA, FIGA will credit the insurer that amount against future assessments, which will streamline the current reconciliation process. The bill also eliminates the required informational filing with OIR regarding the amount of the recoupment factor and recoupment factor methodology.

The bill provides that assessments levied under s. 631.57(3), F.S., are levied upon insurers and that this subsection does not create a cause of action by a policyholder with respect to the levying of, or a policyholder's duty to pay assessments. The bill retains the current caps on assessments of 2 percent for the regular assessment and 2 percent for the emergency assessment per year.

The bill specifies that assessments levied before policy surcharges are collected result in a receivable, which is recognized as an admissible asset [31] under statutory accounting principles, to the extent the receivable is likely to be realized. This revision codifies the current practice of the OIR.[32] The asset must be established and recorded separately from the liability. The insurer must reduce the amount recorded as an asset if it cannot fully recoup the assessment amount because of a reduction in writings or withdrawal from the market. For assessments that are paid after policy surcharges are collected pursuant to the monthly payment option created by the bill, the recognition of assets is based on actual premium written offset by the obligation to FIGA.

Insurers must issue premiums statements which separately display charges or recoupments to inform the policyholders of the amount charged for FIGA assessments. These charges and recoupments, however, are not included in rates filed and approved by the OIR.

Countersignatures on Property, Casualty, and Surety Insurance Policies

The bill provides that the absence of a countersignature does not affect the validity of the insurance policy or contract. The bill will preclude arguments by an insurer that a policy is invalid because it lacks a countersignature.

[31] As defined in the National Association of Insurance Commissioners' Statement of Statutory Accounting Principles No. 4.
[32] Office of Insurance Regulation, Supplemental Memorandum to Information Memorandum OIR-06-023M (December 1, 2006). http://www.floir.com/siteDocuments/SupplementalMemo.pdf (Last visited April 1, 2014).

Long-term Care Insurance Policies

Current law requires insurers of long-term care policies to offer a nonforfeiture protection provision. The bill also clarifies that an insurer may offer a nonforfeiture provision in a long-term care insurance policy in the form of a return of premium in the event of the insured's death, or surrender or cancellation of the policy. The return of a premium is not currently identified as a benefit in a nonforfeiture provision. This change adds an additional option to nonforfeiture provisions.

The Florida Motor Vehicle No-Fault Law (PIP)

The bill enables counties to enact and enforce ordinances regulating health care clinics that receive reimbursement under the PIP law. This provision addresses the holding of *Doctor's Pain Management Group v. Hillsborough County*, which found legislative preemption of health care licensing, thereby striking down a county ordinance which required licensing of specific health-care clinics primarily in the business of billing for PIP claims.[33]

Reciprocal Insurance

Current law authorizes reciprocal insurers to return to subscribers unused premiums, savings, or credits accruing to their accounts.[34] This bill allows reciprocal insurers to return a portion of unassigned funds to subscribers in an amount of up to 10 percent of surplus funds with distribution capped at 50 percent of net income from the prior calendar year.

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[33] Case Nos.: 11-012935, 11-013630, and 11-CA-013039 (Fla. 13th Cir. Ct. 2013).
[34] Section 629.271, F.S.

B. Private Sector Impact:

The Florida Motor Vehicle No-Fault Law (PIP)

The bill empowers local counties to enact ordinances to regulate health-care clinics that bill for PIP claims. To the extent that these ordinances will curb abuses due to fraudulent billing, this bill may prohibit clinics billing illegally for services from operating.

Countersignature Required on Policies for Property, Casualty, and Surety Insurance

This bill removes the requirement for a countersignature by an agent of the insurer. Policyholders may benefit as their policy cannot be invalidated due to the lack of a countersignature.

C. Government Sector Impact:

Assessments

The bill establishes an alternative assessment method, which will allow FIGA to use a monthly installment plan or a combination of methods for the collection of regular and emergency assessments. This will include the current method of collecting assessments up front from insurers who would recoup from policyholders. However, for purposes of the emergency assessment used to defease bonds, the bill provides that the assessment is payable as a lump sum payment or in installments at the option of FIGA. Current law provides FIGA the option of collecting the emergency assessment from insurers up front or paying over 12 months.

Advocates of the bill contend that the current assessment mechanism poses a threat to the solvency of property insurers doing business in Florida after a storm. Advocates of the bill state that a monthly payment reduces the risk of insolvency.

The bill provides a more equitable assessment by creating a uniform percentage assessment of policyholders. The assessment applies to insurers writing in the preceding year and new insurers writing insurance as of, or after the date FIGA certifies the assessment. Under the current method, the amount of assessment is based on the market share of an insurer for the prior year. Insurers that did not write in the prior year but are currently writing are not subject to an assessment.

The bill streamlines the assessment recoupment, reconciliation, and reporting process for insurers by requiring insurers to file a reconciliation report and a payment reconciliation report with FIGA. The bill eliminates the requirement that an insurer must file an informational statement with the OIR prior to applying a recoupment factor on policies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 624.425, 627.727, 627.7311, 627.94072, 629.271, 631.54, 631.55, 631.57, and 631.64 of the Florida Statutes.

IX. Additional Information:

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

CS by Judiciary on April 1, 2014:
The committee substitute:

- Clarifies that an insurer may offer a nonforfeiture provision in a long-term care insurance policy in the form of a return of an insured's premium.
- Provides that a county may enact and enforce an ordinance regulating health care clinics receiving reimbursement under the Florida Motor Vehicle No-Fault Law.
- Revises the law on assessments imposed on property and casualty insurance policyholders by:
  - Creating a uniform assessment percentage to be collected from policy holders and requiring the insurer to initiate collection at least 90 days after the Florida Insurance Guaranty Association (FIGA) certifies the assessment;
  - Authorizing FIGA to use a monthly installment method for collecting assessments from insurers in addition to the current pay and recoup method;
  - Streamlining reconciliation of collections and eliminates a regulatory filing with the Office of Insurance Regulation (OIR); and
  - Codifying the OIR's interpretation of an admissible asset for purposes of statutory accounting treatment of FIGA assessments.
- Authorizes reciprocal insurers to distribute surplus funds to subscribers.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Rules (Richter) recommended the following:

Senate Amendment

Delete lines 91 - 101
and insert:
629.271 Distribution of savings.—
(1) A reciprocal insurer may ~~from time to time~~ return to its subscribers any unused premiums, savings, or credits accruing to their accounts. ~~Any~~ Such distribution may ~~shall~~ not unfairly discriminate between classes of risks, or policies, or between subscribers, but ~~such distribution~~ may vary as to classes of subscribers based on ~~upon~~ the experience of such


541096

classes.

(2) In addition to the option provided in subsection (1), a domestic reciprocal insurer may, upon the prior written approval of the office, pay to its subscribers a portion of unassigned funds of up to 10 percent of surplus with distribution limited to 50 percent of net income from the previous calendar year. Such distribution may not unfairly discriminate between classes of risks, or policies, or between subscribers, but may vary as to classes of subscribers based on the experience of such classes.

By the Committee on Judiciary; and Senator Smith

590-03520-14 2014870c1

A bill to be entitled

An act relating to insurance; amending s. 624.425, F.S.; providing that the absence of a countersignature does not affect the validity of a policy or contract; amending s. 627.7311, F.S.; providing that a county may enact and enforce ordinances applicable to certain health care clinics; amending s. 627.94072, F.S.; providing an alternative form of a nonforfeiture provision for long-term care insurance; amending s. 629.271, F.S.; authorizing reciprocal insurers to return a portion of unassigned funds to their subscribers; amending s. 631.54, F.S.; defining the term "assessment year"; amending s. 631.57, F.S.; revising provisions relating to the levy of assessments on insurers by the Florida Insurance Guaranty Association; specifying the conditions under which such assessments are paid; revising procedures and timeframes for the levying of the assessments; deleting the requirement that insurers file a final accounting report documenting the recoupment; revising an exemption for assessments; amending s. 631.64, F.S.; requiring charges or recoupments to be displayed separately on premium statements to policyholders and prohibiting their inclusion in rates; amending ss. 627.727 and 631.55, F.S.; conforming cross-references; providing an effective date.

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

590-03520-14 2014870c1

Section 1. Subsection (1) of section 624.425, Florida Statutes, is amended to read:

624.425 Agent countersignature required, property, casualty, surety insurance.—

(1) Except as stated in s. 624.426, no authorized property, casualty, or surety insurer shall assume direct liability as to a subject of insurance resident, located, or to be performed in this state unless the policy or contract of insurance is issued by or through, and is countersigned by, an agent who is regularly commissioned and licensed currently as an agent and appointed as an agent for the insurer under this code. However, the absence of a countersignature does not affect the validity of the policy or contract. If two or more authorized insurers issue a single policy of insurance against legal liability for loss or damage to person or property caused by a ~~the~~ nuclear energy hazard, or a single policy insuring against loss or damage to property by radioactive contamination, whether or not also insuring against one or more other perils that may be insured ~~proper to insure~~ against in this state, such policy if otherwise lawful may be countersigned on behalf of all of the insurers by a licensed and appointed agent of the ~~any~~ insurer appearing thereon. The producing agent shall receive on each policy or contract the full and usual commission allowed and paid by the insurer to its agents on business written or transacted by them for the insurer.

Section 2. Section 627.7311, Florida Statutes, is amended to read:

627.7311 Effect of law ~~on personal injury protection policies~~.—

(1) The provisions and procedures authorized in ss. 627.730-627.7405 shall be implemented by insurers offering policies pursuant to the Florida Motor Vehicle No-Fault Law. The Legislature intends that these provisions and procedures have full force and effect regardless of their express inclusion in an insurance policy form, and a specific provision or procedure authorized in ss. 627.730-627.7405 shall control over general provisions in an insurance policy form. An insurer is not required to amend its policy form or to expressly notify providers, claimants, or insureds in order to implement and apply such provisions or procedures.

(2) Sections 627.730-627.7405 do not preclude a county from enacting and enforcing an ordinance applicable to health care clinics that receive reimbursement under the Florida Motor Vehicle No-Fault Law.

Section 3. Subsection (2) of section 627.94072, Florida Statutes, is amended to read:

627.94072 Mandatory offers.—

(2) An insurer that offers a long-term care insurance policy, certificate, or rider in this state shall ~~must~~ offer a nonforfeiture protection provision providing reduced paid-up insurance, extended term, shortened benefit period, or ~~any~~ other benefit ~~benefits~~ approved by the office if all or part of a premium is not paid. A nonforfeiture provision may also be offered in the form of a return of premium on the death of the insured, or on the complete surrender or cancellation of the policy or contract. Nonforfeiture benefits and any additional premium for such benefits must be computed in an actuarially sound manner~~,~~ using a methodology that has been filed with and

approved by the office.

Section 4. Section 629.271, Florida Statutes, is amended to read:

629.271 Distribution of savings.—A reciprocal insurer may ~~from time to time~~ return to its subscribers any unused premiums, savings, or credits accruing to their accounts. Upon the prior written approval of the office, a reciprocal insurer may return to its subscribers a portion of unassigned funds of up to 10 percent of surplus with distribution limited to 50 percent of net income from the previous calendar year. ~~Any~~ Such distribution may ~~shall~~ not unfairly discriminate between classes of risks, or policies, or between subscribers, but ~~such distribution~~ may vary as to classes of subscribers based on ~~upon~~ the experience of such classes.

Section 5. Subsections (2) through (9) of section 631.54, Florida Statutes, are renumbered as subsections (3) through (10), respectively, and a new subsection (2) is added to that section to read:

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

(2) "Assessment year" means the 12-month period, which may begin on the first day of any calendar quarter, whether January 1, April 1, July 1, or October 1, as specified in an order issued by the office directing insurers to pay an assessment to the association. Upon entry of the order, insurers may begin collecting assessments from policyholders for the assessment year.

Section 6. Subsections (3) and (4) of section 631.57, Florida Statutes, are amended to read:

631.57 Powers and duties of the association.—

(3)(a) To the extent necessary to secure ~~the~~ funds for the respective accounts for the payment of covered claims, to pay the reasonable costs to administer such accounts ~~the same~~, and ~~to the extent necessary~~ to secure ~~the~~ funds for the account specified in s. 631.55(2)(b) or to retire indebtedness, including, without limitation, the principal, redemption premium, if any, and interest on, and related costs of issuance of, bonds issued under s. 631.695 and the funding of ~~any~~ reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, the office, upon certification of the board of directors, shall levy assessments initially estimated in the proportion that each insurer's net direct written premiums in this state in the classes protected by the account bears to the total of said net direct written premiums received in this state by all such insurers for the preceding calendar year for the kinds of insurance included within such account. Assessments shall be remitted to and administered by the board of directors in the manner specified by the approved plan and paragraph (f). Each insurer so assessed shall have at least 30 days' written notice as to the date the initial assessment payment is due and payable. Every assessment shall be ~~made as~~ a uniform percentage applicable to the net direct written premiums of each insurer in the kinds of insurance included within the account in which the assessment is made. The assessments levied against any insurer may ~~shall~~ not exceed in any one year more than 2 percent of that insurer's net direct written premiums in this state for the kinds of insurance included within such account during the calendar year next preceding the date of such assessments.

(b) If sufficient funds from such assessments, together with funds previously raised, are not available in any one year in the respective account to make all the payments or reimbursements then owing to insurers, the funds available shall be prorated and the unpaid portion ~~shall be~~ paid as soon ~~thereafter~~ as funds become available.

(c) The Legislature finds and declares that all assessments paid by an insurer or insurer group as a result of a levy by the office, including assessments levied pursuant to paragraph (a) and emergency assessments levied pursuant to paragraph (e), constitute advances of funds from the insurer to the association. An insurer may fully recoup such advances by applying the uniform assessment percentage levied by the office to all ~~a separate recoupment factor to the premium of~~ policies of the same kind or line as were considered by the office in determining the assessment liability of the insurer or insurer group as set forth in paragraph (f).

1. Assessments levied under subparagraph (f)1. are paid before policy surcharges are collected and result in a receivable for policy surcharges collected in the future. This amount, to the extent it is likely that it will be realized, meets the definition of an admissible asset as specified in the National Association of Insurance Commissioners' Statement of Statutory Accounting Principles No. 4. The asset shall be established and recorded separately from the liability regardless of whether it is based on a retrospective or prospective premium-based assessment. If an insurer is unable to fully recoup the amount of the assessment because of a reduction in writings or withdrawal from the market, the amount recorded

as an asset shall be reduced to the amount reasonably expected to be recouped.

2. Assessments levied under subparagraph (f)2. are paid after policy surcharges are collected so that the recognition of assets is based on actual premium written offset by the obligation to the association.

(d) ~~No~~ State funds may not ~~of any kind shall~~ be allocated or paid to the ~~said~~ association or any of its accounts.

(e)1.~~a.~~ In addition to assessments ~~otherwise~~ authorized in paragraph (a), and to the extent necessary to secure the funds for the account specified in s. 631.55(2)(b) for the direct payment of covered claims of insurers rendered insolvent by the effects of a hurricane and to pay the reasonable costs to administer such claims, or to retire indebtedness, including, without limitation, the principal, redemption premium, if any, and interest on, and related costs of issuance of, bonds issued under s. 631.695 and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, the office, upon certification of the board of directors, shall levy emergency assessments upon insurers holding a certificate of authority. The emergency assessments payable under this paragraph by any insurer may ~~shall~~ not exceed in any single year more than 2 percent of that insurer's direct written premiums, net of refunds, in this state during the preceding calendar year for the kinds of insurance within the account specified in s. 631.55(2)(b).

2.~~b.~~ ~~Any~~ Emergency assessments authorized under this paragraph shall be levied by the office upon insurers referred

to in subparagraph 1. ~~sub-subparagraph a.~~, upon certification as to the need for such assessments by the board of directors. If ~~In the event~~ the board ~~of directors~~ participates in the issuance of bonds in accordance with s. 631.695, emergency assessments shall be levied in each year that bonds issued under s. 631.695 and secured by such emergency assessments are outstanding~~,~~ in ~~such~~ amounts up to such 2 percent ~~2-percent~~ limit as required in order to provide for the full and timely payment of the principal of, redemption premium, if any, and interest on, and related costs of issuance of, such bonds. The emergency assessments ~~provided for in this paragraph~~ are assigned and pledged to the municipality, county, or legal entity issuing bonds under s. 631.695 for the benefit of the holders of such bonds~~,~~ in order ~~to enable such municipality, county, or legal entity~~ to provide for the payment of the principal of, redemption premium, if any, and interest on such bonds, the cost of issuance of such bonds, and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, without ~~the necessity of any~~ further action by the association, the office, or any other party. If ~~To the extent~~ bonds are issued under s. 631.695 and the association determines to secure such bonds by a pledge of revenues received from the emergency assessments, such bonds, upon such pledge of revenues, shall be secured by and payable from the proceeds of such emergency assessments, and the proceeds of emergency assessments levied under this paragraph shall be remitted directly to and administered by the trustee or custodian appointed for such bonds.

3.~~c.~~ Emergency assessments used to defease bonds issued under this part ~~paragraph~~ may be payable in a single payment or, at the option of the association, may be payable in 12 monthly installments with the first installment being due and payable at the end of the month after an emergency assessment is levied and subsequent installments being due by ~~not later than~~ the end of each succeeding month.

4.~~d.~~ If emergency assessments are imposed, the report required by s. 631.695(7) must ~~shall~~ include an analysis of the revenues generated from the emergency assessments imposed under this paragraph.

5.~~e.~~ If emergency assessments are imposed, the references in sub-subparagraph (1)(a)3.b. and s. 631.695(2) and (7) to assessments levied under paragraph (a) must ~~shall~~ include emergency assessments imposed under this paragraph.

6.~~2.~~ If the board of directors participates in the issuance of bonds in accordance with s. 631.695, an annual assessment under this paragraph shall continue while the bonds issued with respect to which the assessment was imposed are outstanding, including any bonds the proceeds of which were used to refund bonds issued pursuant to s. 631.695, unless adequate provision has been made for the payment of the bonds in the documents authorizing the issuance of such bonds.

7.~~3.~~ Emergency assessments under this paragraph are not premium and are not subject to the premium tax, to any fees, or to any commissions. An insurer is liable for all emergency assessments that the insurer collects and shall treat the failure of an insured to pay an emergency assessment as a failure to pay the premium. An insurer is not liable for

uncollectible emergency assessments.

(f) ~~The recoupment factor applied to policies in accordance with paragraph (c) shall be selected by the insurer or insurer group so as to provide for the probable recoupment of both assessments levied pursuant to paragraph (a) and emergency assessments over a period of 12 months, unless the insurer or insurer group, at its option, elects to recoup the assessment over a longer period. The recoupment factor shall apply to all policies of the same kind or line as were considered by the office in determining the assessment liability of the insurer or insurer group issued or renewed during a 12-month period. If the insurer or insurer group does not collect the full amount of the assessment during one 12-month period, the insurer or insurer group may apply recalculated recoupment factors to policies issued or renewed during one or more succeeding 12-month periods. If, at the end of a 12-month period, the insurer or insurer group has collected from the combined kinds or lines of policies subject to assessment more than the total amount of the assessment paid by the insurer or insurer group, the excess amount shall be disbursed as follows:~~

1. The association, office, and insurers remitting assessments pursuant to paragraph (a) or paragraph (e) must comply with the following:

a. In the order levying an assessment, the office shall specify the actual percentage amount to be collected uniformly from all the policyholders of insurers subject to the assessment and the date on which the assessment year begins, which may not begin until 90 days after the association board certifies such an assessment.

b. Insurers shall make an initial payment to the association before the beginning of the assessment year on or before the date specified in the order of the office.

c. Insurers that have written insurance in the calendar year before the year in which the assessment is certified by the board shall make an initial payment based on the net direct written premium amount from the prior calendar year as set forth in the insurers' annual statements, multiplied by the uniform percentage of premium specified in the order issued by the office. Insurers that have not written insurance in the prior calendar year in any of the lines under the account which are being assessed, but that are writing insurance as of, or after, the date the board certifies the assessment to the office, shall pay an amount based on a good faith estimate of the amount of net direct written premium anticipated to be written in the subject lines of business for the assessment year, multiplied by the uniform percentage of premium specified in the order issued by the office.

d. Insurers shall file a reconciliation report with the association within 45 days after the end of the assessment year which indicates the amount of the initial payment to the association before the assessment year, whether such amount was based on net direct written premium contained in a prior calendar year annual statement or a good faith projection, the amount actually collected during the assessment year, and such other information contained on a form adopted by the association and provided to the insurers in advance. If the insurer collected from policyholders more than the amount initially paid, the insurer shall pay the excess amount to the

association. If the insurer collected from policyholders an amount which is less than the amount initially paid to the association, the association shall credit the insurer that amount against future assessments. Such payment reconciliation report, and any payment of excess amounts collected from policyholders, shall be completed and remitted to the association within 90 days after the end of the assessment year. The association shall send a final reconciliation report on all insurers to the office within 120 days after each assessment year.

e. Insurers remitting reconciliation reports to the association under this paragraph are subject to s. 626.9541(1)(e). ~~If the excess amount does not exceed 15 percent of the total assessment paid by the insurer or insurer group, the excess amount shall be remitted to the association within 60 days after the end of the 12-month period in which the excess recoupment charges were collected.~~

2. The association may use a monthly installment method instead of the method described in sub-subparagraphs 1.b. and c. or in combination thereof based on the association's projected cash flow. If the association projects that it has cash on hand for the payment of anticipated claims in the applicable account for at least 6 months, the board may make an estimate of the assessment needed and may recommend to the office the assessment percentage that may be collected as a monthly assessment. The office may, in the order levying the assessment on insurers, specify that the assessment is due and payable monthly as the funds are collected from insureds throughout the assessment year, in which case the assessment shall be a uniform percentage

of premium collected during the assessment year and shall be collected from all policyholders with policies in the classes protected by the account. All insurers shall collect the assessment without regard to whether the insurers reported premium in the year preceding the assessment. Insurers are not required to advance funds if the association and the office elect to use the monthly installment option. All funds collected shall be retained by the association for the payment of current or future claims. This subparagraph does not alter the obligation of an insurer to remit assessments levied pursuant to this subsection to the association. ~~If the excess amount exceeds 15 percent of the total assessment paid by the insurer or insurer group, the excess amount shall be returned to the insurer's or insurer group's current policyholders by refunds or premium credits. The association shall use any remitted excess recoupment amounts to reduce future assessments.~~

(g) Amounts recouped pursuant to this subsection for assessments levied under paragraph (a) due to insolvencies on or after July 1, 2010, are considered premium solely for premium tax purposes and are not subject to fees or commissions. However, insurers shall treat the failure of an insured to pay a recoupment charge as a failure to pay the premium.

~~(h) At least 15 days before applying the recoupment factor to any policies, the insurer or insurer group shall file with the office a statement for informational purposes only setting forth the amount of the recoupment factor and an explanation of how the recoupment factor will be applied. Such statement shall include documentation of the assessment paid by the insurer or insurer group and the arithmetic calculations supporting the~~

~~recoupment factor. The insurer or insurer group may use the recoupment factor at any time after the expiration of the 15-day period. The insurer or insurer group need submit only one informational statement for all lines of business using the same recoupment factor.~~

~~(i) No later than 90 days after the insurer or insurer group has completed the recoupment process, the insurer or insurer group shall file with the office, for information purposes only, a final accounting report documenting the recoupment. The report shall provide the amounts of assessments paid by the insurer or insurer group, the amounts and percentages recouped by year from each affected line of business, and the direct written premium subject to recoupment by year. The insurer or insurer group need submit only one report for all lines of business using the same recoupment factor.~~

(h) Assessments levied under this subsection are levied upon insurers. This subsection does not create a cause of action by a policyholder with respect to the levying of, or a policyholder's duty to pay, such assessments.

(4) The office ~~department~~ may exempt or temporarily defer any insurer from any regular or emergency assessment if the office finds that the insurer is impaired or insolvent or if an assessment would result in such insurer's financial statement reflecting an amount of capital or surplus less than the sum of the minimum amount required by any jurisdiction in which the insurer is authorized to transact insurance.

Section 7. Section 631.64, Florida Statutes, is amended to read:

631.64 Recognition of assessments ~~in rates~~.—Charges or recoupments shall be separately displayed on premium statements to enable policyholders to determine the amount charged for association assessments but may not be included in rates filed and approved by the office. ~~The rates and premiums charged for insurance policies to which this part applies may include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurer less any amounts returned to the member insurer by the association, and such rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer.~~

Section 8. Subsection (5) of section 627.727, Florida Statutes, is amended to read:

627.727 Motor vehicle insurance; uninsured and underinsured vehicle coverage; insolvent insurer protection.—

(5) Any person having a claim against an insolvent insurer as defined in s. 631.54~~(6)~~ under ~~the provisions of~~ this section shall present such claim for payment to the Florida Insurance Guaranty Association only. In the event of a payment to a ~~any~~ person in settlement of a claim arising under ~~the provisions of~~ this section, the association is not subrogated or entitled to ~~any~~ recovery against the claimant's insurer. The association, however, has the rights of recovery as set forth in chapter 631 in the proceeds recoverable from the assets of the insolvent insurer.

Section 9. Subsection (1) of section 631.55, Florida Statutes, is amended to read:

631.55 Creation of the association.—

(1) There is created a nonprofit corporation to be known as the "Florida Insurance Guaranty Association, Incorporated." All insurers defined as member insurers in s. 631.54~~(7)~~ shall be members of the association as a condition of their authority to transact insurance in this state, and, further, as a condition of such authority, an insurer must ~~shall~~ agree to reimburse the association for all claim payments the association makes on the ~~said~~ insurer's behalf if such insurer is subsequently rehabilitated. The association shall perform its functions under a plan of operation established and approved under s. 631.58 and shall exercise its powers through a board of directors established under s. 631.56. The corporation shall have all those powers granted or permitted nonprofit corporations, as provided in chapter 617.

Section 10. This act shall take effect July 1, 2014.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 1172
INTRODUCER:	Senator Sobel
SUBJECT:	Conveyance of Property Taken by Eminent Domain
DATE:	April 17, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stearns	Yeatman	CA	**Favorable**
2.	Munroe	Cibula	JU	**Favorable**
3.	Stearns	Phelps	RC	**Pre-meeting**

I. Summary:

SB 1172 authorizes the state or a political subdivision to convey, without restriction, property taken by eminent domain to a private party if the property is near a large hub airport and the property is condemned pursuant to a noise mitigation or noise compatibility program.

II. Present Situation:

Constitutional Provisions on Takings

The Fifth Amendment of the United States Constitution applies to the states through the Fourteenth Amendment and provides, in part: "nor shall private property be taken for public use, without just compensation.[1]"

Similarly, the Florida Constitution states that: "No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner.[2]"

There is no absolute definition of what constitutes a public use. The concept changes along with evolutions of societal norms and changed "circumstances brought about by an increase in population and new modes of communication and transportation."[3] In situations where both private and public benefits result from a condemnation, the determination of whether the condemnation was for a public use may turn on whether the public benefits are of a primary or an incidental character.[4] An incidental benefit to a private party does not render a taking invalid so long as the primary benefit is to the public.

[1] U.S.C.A. CONST. AMEND V.
[2] FLA. CONST., Article X., s. 6(a).
[3] 21 Fla. Jur. 2d Eminent Domain s. 27, *Generally; public purpose distinguished* (2014).
[4] 21 Fla. Jur. 2d Eminent Domain s. 29, *Purpose partly public and partly private; incidental private use or benefit* (2014).

Florida Law on Eminent Domain

Florida affords generous treatment to private property owners, or defendants in eminent domain proceedings. In Florida, the owner is entitled to full and fair compensation.[5] Compensation is generally the payment of the fair market value of the property.[6] Fair market value is considered to be based upon what a willing buyer would pay to a willing seller.[7] Also, the petitioner must always pay attorney's fees and reasonable costs to the defendant.[8] Reasonable costs include appraisal fees and, if business damages are involved, an accountant's fee.[9] Defendants also have the right to a jury trial.[10]

Eminent domain is effected in one of two ways. The first is through the traditional eminent domain process, which involves the filing of a petition for condemnation and, if the property owner challenges the action, a jury trial.[11] The second process, called a "quick taking," occurs when the governmental entity files a declaration of taking (containing a good faith estimate of the value of the property) and takes immediate possession of the property before the completion of the judicial procedure.[12] "A taking may result from a 'physical invasion' of the property or may follow a 'regulatory imposition.'"[13]

Restrictions on the Conveyance of Condemned Property to Private Parties

The state may not authorize the taking of private property solely for another private party's private use, even if the state pays full compensation for the condemned property.[14] Neither the state nor any political subdivision may convey a property taken by condemnation to a private entity, unless the conveyance is authorized by law.[15] Current law allows condemned property to be conveyed to a private party for:

- Use in common carrier services or systems;
- Use as a road or other right-of-way;
- Use in providing utility services or systems; and
- Use in providing public infrastructure.

There are also statutory restrictions on the subsequent conveyance of a condemned property that has already been conveyed to a private party. If ownership of a condemned property is conveyed to a private party pursuant to one of the statutory exceptions described above and at least 10 years have elapsed since the condemning authority acquired title to the property, then the property may be transferred again to another private party after public notice and competitive

[5] Debra Herman and Jorge Martinez-Esteve, *The Admissibility of Dedication Requirements in Condemnation Cases: No Longer the Road Less Traveled*, 85 FLA. B.J. 20, 21 (November 2011).
[6] *Id*.
[7] *Id*.
[8] Section 73.091(1), F.S.
[9] *Id*.
[10] Section 73.071(1), F.S.
[11] Sections 73.031(1) and 73.071(1), F.S.
[12] Section 74.031, F.S.
[13] *Alachua Land Investors, LLC v. City of Gainesville*, 107 So. 3d 1154, 1158 (Fla. 1st DCA 2013) (internal citations omitted).
[14] 21 Fla. Jur. 2d Eminent Domain s. 25, *Taking for private use restricted* (2014).
[15] FLA. CONST., Article X, s. 6(c); *see also*, s 73.013(1), F.S.

bidding (unless otherwise provided by general law).[16] If fewer than 10 years have elapsed since the condemning authority acquired title to the property, the property may be conveyed a second time if the current titleholder certifies that the property is no longer needed for the use for which the property was originally condemned, and the owner from whom the property was taken by eminent domain is given the opportunity to repurchase the property at the price received from the condemning authority.[17] Two statutory exceptions that substitute the condemning authority for the certifying party or the current titleholder operate similarly.[18]

Large Hub Airports

According to the Federal Aviation Administration, a "large hub airport" is a public use airport that serves civil aviation and accounts for 1 percent or more of annual national passenger boarding.[19] There are four large hub airports in Florida: Fort Lauderdale-Hollywood International Airport, Miami International Airport, Orlando International Airport, and Tampa International Airport.[20]

The National Plan of Integrated Airport Systems is overseen by the United States Secretary of Transportation.[21] The plan is designed to ensure a "safe, efficient, and integrated system of public-use airports adequate to anticipate and meet the needs of civil aeronautics, to meet the national defense requirements of the Secretary of Defense, and to meet identified needs of the United States Postal Service."[22]

The State of Florida and its political subdivisions have the authority to condemn property when necessary for air approach protection.[23] A county's taking of only residential property (but not similarly situated commercial property) serves a valid public purpose when the residential property is condemned "because the airport zoning laws indicate that residential construction in areas exceeding certain noise level requirements is an incompatible use, and testimony indicates that the parcels taken meet the requirements for incompatible use."[24]

Appendix A of 14 C.F.R. part 150 regulates "noise exposure maps" related to airports. A noise exposure map is a "scaled, geographic depiction of an airport, its noise contours, and surrounding area."[25] Appendix A establishes a uniform methodology for the development and preparation of airport noise exposure maps. It also identifies land uses that are considered to be compatible with various exposures of individuals to noise around airports. Residential land uses are not recommended for areas with an average noise exposure above 65 decibels.

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[16] Section 73.013(2)(a), F.S.
[17] Section 73.013(2)(b), F.S.
[18] Sections 73.013(1)(f) and (g), F.S.
[19] Federal Aviation Administration, *Airport Categories – Airports*, *available at*, http://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/categories/ (last visited March 26, 2014).
[20] Wikipedia, *List of airports in Florida*, *available at*, http://en.wikipedia.org/wiki/List_of_airports_in_Florida (last visited March 26, 2014).
[21] 49 U.S.C. s. 47103.
[22] *Id.*
[23] Section 333.12, F.S.
[24] 21 Fla. Jur. 2d Eminent Domain s. 31, *Airports* (2014).
[25] 14 C.F.R. s. 150.7.

III. Effect of Proposed Changes:

Section 1 authorizes the state or a political subdivision to convey a condemned property without restriction to a private party if the property is near a large hub airport and the property is condemned pursuant to:

- A noise mitigation program; or
- A noise compatibility program; and
- The property was condemned on the basis:
  - That the property is deemed incompatible with residential land use under the standards provided by the Federal Aviation Administration in Appendix A of 14 C.F.R. part 150;
  - Of noise mitigation measures; or
  - Of measures required for the safety utility, or efficiency of an airport identified in a Record of Decision or other evaluation issued by the Federal Aviation Administration in connection with an airport development project.

This authority only applies to large hub airports identified in the National Plan of Integrated Airport Systems prepared in accordance with 49 U.S.C. s. 47103.

Section 2 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Florida Constitution prohibits the conveyance of private property taken by eminent domain after January 2, 2007, to a private party, unless that conveyance is authorized by a general law passed by 60 percent of the membership of each house of the Legislature.[26] The bill authorizes the conveyance of private property taken by eminent domain, therefore it requires a 60 percent vote for final passage.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[26] FLA. CONST., Article X., s 6(c).

B. Private Sector Impact:

Florida's eminent domain law requires a condemning authority to pay the owner of the condemned lands full compensation (as opposed to the federally mandated "just compensation"). Therefore, any private owner of condemned lands should not suffer an adverse fiscal impact.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 73.013 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Sobel

33-01132-14 20141172__

A bill to be entitled

An act relating to the conveyance of property taken by eminent domain; amending s. 73.013, F.S.; authorizing a condemning authority to convey, without restriction, lands condemned for specific noise mitigation or noise compatibility programs at certain large hub airports to a person or private entity; providing an effective date.

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

Section 1. Subsection (1) of section 73.013, Florida Statutes, is amended to read:

73.013 Conveyance of property taken by eminent domain; preservation of government entity communications services eminent domain limitation; exception to restrictions on power of eminent domain.—

(1) Notwithstanding any other provision of law, including any charter provision, ordinance, statute, or special law, if the state, any political subdivision as defined in s. 1.01~~(8)~~, or any other entity to which the power of eminent domain is delegated files a petition of condemnation on or after the effective date of this section regarding a parcel of real property in this state, ownership or control of property acquired pursuant to such petition may not be conveyed by the condemning authority or any other entity to a natural person or private entity, by lease or otherwise, except that ownership or control of property acquired pursuant to such petition may be conveyed, by lease or otherwise, to a natural person or private

33-01132-14 20141172__

entity:

(a) For use in providing common carrier services or systems;

(b)1. For use as a road or other right-of-way or means that is open to the public for transportation, whether at no charge or by toll;

2. For use in the provision of transportation-related services, business opportunities, and products pursuant to s. 338.234, on a toll road;

(c) That is a public or private utility for use in providing electricity services or systems, natural or manufactured gas services or systems, water and wastewater services or systems, stormwater or runoff services or systems, sewer services or systems, pipeline facilities, telephone services or systems, or similar services or systems;

(d) For use in providing public infrastructure;

(e) That occupies, pursuant to a lease, an incidental part of a public property or a public facility for the purpose of providing goods or services to the public;

(f) Without restriction, after public notice and competitive bidding unless otherwise provided by general law, if less than 10 years have elapsed since the condemning authority acquired title to the property and the following conditions are met:

1. The condemning authority or governmental entity holding title to the property documents that the property is no longer needed for the use or purpose for which it was acquired by the condemning authority or for which it was transferred to the current titleholder; and

2. The owner from whom the property was taken by eminent domain is given the opportunity to repurchase the property at the price that he or she received from the condemning authority;

(g) After public notice and competitive bidding unless otherwise provided by general law, if the property was owned and controlled by the condemning authority or a governmental entity for at least 10 years after the condemning authority acquired title to the property; ~~or~~

(h) In accordance with subsection (2)<u>; or</u>

<u>(i) Without restriction, if the condemning authority condemns the property pursuant to a noise mitigation or noise compatibility program at an airport governed by Federal Aviation Administration requirements on the basis that the property is deemed incompatible with residential land use under the standards provided in Appendix A of 14 C.F.R. part 150 or on the basis of noise mitigation measures or measures required for the safety, utility, or efficiency of an airport identified in a Record of Decision or other evaluation issued by the Federal Aviation Administration in connection with an airport development project. This paragraph applies only to large hub airports identified in the National Plan of Integrated Airport Systems prepared in accordance with 49 U.S.C. s. 47103</u>.

Section 2. This act shall take effect July 1, 2014.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	HM 281
INTRODUCER:	Representative Hill and others
SUBJECT:	Keystone XL Pipeline
DATE:	April 11, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Phelps	RC	**Pre-meeting**

I. Summary:

HM 281 urges the President to issue final approval of the Keystone XL Pipeline Project, a proposed 875-mile pipeline crossing the U.S.-Canadian border at Morgan, Montana, and continuing to Steele City, Nebraska, where it will connect with existing pipelines to deliver crude oil from oil sands in Canada and from the Williston Basin (Bakken) region in Montana and North Dakota to refineries in the Midwest and the Gulf Coast of Texas.

II. Present Situation:

Permit Process Requirements

Executive Order 13337 requires that all proposed petroleum pipelines that cross international borders of the U.S. receive a Presidential Permit.[1] In this process, the President must first issue an Executive Order which directs the Department of State (Department) to determine whether a particular project serves a national interest. In this determination, the Department considers factors consistent with the National Environmental Policy Act and prepares a Final Supplemental Environmental Impact Statement (FSEIS) which determines if the project does or does not serve a national interest. Upon publishing the FSEIS, the Department has 90 days to consult with eight federal agencies including the Environmental Protection Agency and the Departments of Energy, Defense, Transportation, Homeland Security, Justice, and Commerce. The Department must also consider public comment on the proposed project. This window does not impact the President's unspecified timeline[2] for making a decision on the Project's application. At any point after this

[1] *Executive Order 13337—Issuance of Permits With Respect to Certain Energy-Related Facilities and Land Transportation Crossings on the International Boundaries of the United States*, April 30, 2004, *available at* http://www.gpo.gov/fdsys/pkg/WCPD-2004-05-10/pdf/WCPD-2004-05-10-Pg723.pdf.

[2] According to the U.S. Department of State (in *Remarks on the Release of the Final Supplemental Environmental Impact Statement for the Proposed Keystone Pipeline*, Jan. 31, 2014, *available at* http://www.state.gov/e/oes/rls/remarks/2014/221129.htm) "the only specific timeline that's given in the executive order is that the consulting agencies have up to 90 days to get their views in."

Presidential Permit process, the President may issue a National Interest Determination and then either approve or deny the Project's application.[3]

Keystone Pipeline System and Keystone XL Pipeline

The Keystone Pipeline System is an oil pipeline system delivering oil from the Western Canadian Sedimentary Basin in Alberta, Canada, to refineries in the United States in Steele City, Nebraska; Wood River and Patoka, Illinois; and the Gulf Coast of Texas. It consists of four pipeline systems, or phases. Three are complete and operational:

- Phase I (for which the Department issued a Presidential Permit on March 17, 2008) runs from Hardisty, Alberta, to Steele City, Nebraska, and then to Wood River and Patoka, Illinois;
- Phase II extends south from Steele City, Nebraska, to Cushing, Oklahoma; and
- Phase III extends further south from Cushing, Oklahoma, to Nederland, Texas. [4]

Phase IV, the Keystone XL Pipeline Project (Project), also will run from Hardisty, Alberta to Steele City, Nebraska. In 2008, TransCanada Keystone Pipeline, LP (TransCanada), a Canadian company that is financially backing the entire pipeline system, submitted its first application for the Project. [5] The proposed pipeline was 1,384 miles, and would have crossed 90 miles of the Sand Hills Region in Nebraska, a region the Nebraska Department of Environmental Quality identified as environmentally-sensitive. The Department published the FSEIS for this proposal in 2011, but the President subsequently denied the permit due to the controversial path the Project took across the Sand Hills Region.

On May 4, 2012, TransCanada filed a new Presidential Permit application, proposing a new route which avoids the Sand Hills Region. Under the new application, the Project consists of an 875-mile pipeline crossing the U.S.-Canadian border at Morgan, Montana, and continuing to Steele City, Nebraska. The Project is estimated to cost TransCanada approximately $3.3 billion.[6] The Project is estimated to take two years to complete construction. Along with the three previous phases of the Pipeline, the Project will have the capacity to deliver roughly 830,000 barrels per day of crude oil from oil sands in Canada and from the Williston Basin (Bakken) region in Montana and North Dakota to refineries in the Midwest and the Gulf Coast of Texas.[7]

For its review of the application, the Department selected the consulting firm, Environmental Resources Management as a third-party to prepare the Supplemental Environmental Impact Statement. In preparing the FSEIS, the Department took into consideration over 1.5 million public comment submissions.[8] The Department issued the FSEIS in January 2014, triggering a

[3] 42 U.S.C.A. § 4332 (West); U.S. Department of State, *Remarks on the Release of the Final Supplemental Environmental Impact Statement for the Proposed Keystone Pipeline*, (Jan. 31, 2014), *available at* http://www.state.gov/e/oes/rls/remarks/2014/221129.htm.

[4] United States Department of State Bureau of Oceans and International Environmental and Scientific Affairs, *Final Supplemental Impact Statement for the Keystone XL Project (FSEIS)* (January 2014) at 3, *available at* http://keystonepipeline-xl.state.gov/documents/organization/221135.pdf.

[5] FSEIS Exec. Summ., at 1.

[6] FSEIS Exec. Summ. at 9.

[7] FSEIS Exec. Summ. at 6.

[8] U.S. Department of State, *Keystone XL Pipeline Evaluation Process Fact Sheet*, *available at* Keystonepipeline-xl.state.gov/draftseis/205549.htm.

90-day period for the Department to solicit comment from the appropriate U.S. agencies per Executive Order 13337.

The FSEIS states the Project will not significantly add to greenhouse emissions.[9] Specifically, the FSEIS states that assuming the Project occurs within the next few years, the climate conditions will not substantially differ from the current conditions.[10] The FSEIS also states that the potential for certain spills have been mitigated by implementation of the PHSMA prevention plan.[11] Finally, the FSEIS states the Project will support approximately 42,100 jobs either indirectly, directly, or induced by the Project. Approximately 3,900 of these jobs are construction jobs located through Montana, South Dakota, Nebraska, and Kansas.[12] Overall, the Project would result in approximately $2 billion in earnings throughout the United States and approximately $3.4 billion (or 0.02 percent) to the U.S. gross domestic product (GDP).[13]

Supporters and Opponents

Supporters of the Keystone XL Pipeline state the Project supports market demand for crude oil refineries in closer proximity to the U.S. Additionally, obtaining crude oil from Canada would reduce the necessity to rely on foreign oil companies in unstable regions.[14] Pipelines are one of the safest and most cost-effective ways to transport oil and other hazardous liquid products to the U.S., reducing the potential for spills and other related disasters.[15] In early 2013, 53 Senators including 44 Republicans and 9 Democrats signed and sent a letter to the President urging him to approve the Project.[16] At least one poll has shown approximately two-thirds of Americans support the construction of the Project.[17]

Specifically in Florida, supporters of the Pipeline claim that quick and easy access to oil is important to Florida because Floridians consume approximately 9.5 billion gallons of gasoline and diesel fuel annually.[18] Various Florida industries such as fertilizer, agrochemical, and plastic rely heavily on the access and use of oil-based products. Because Florida has no crude oil refineries, much of its petroleum products must be delivered to cities such as Jacksonville, Miami, and Tampa, and ports such as Port Canaveral, Port Manatee, and Port Everglades.[19] The

[9] FSEIS Exec. Summ. at 15, 34.
[10] FSEIS Exec. Summ. at 17.
[11] FSEIS Exec. Summ. at 19.
[12] FSEIS Exec. Summ. at 19.
[13] *Id*.
[14] Nancy Smith, *Enough Stalling on the Keystone XL Pipeline*, SUNSHINE STATE NEWS (October 19, 2013), *available at* http://www.sunshinestatenews.com/story/enough-stalling-keystone-xl-pipeline-already.
[15]U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration, Safe Pipeline FAQs, *available at* http://phmsa.dot.gov/portal/site/PHMSA/menuitem.ebdc7a8a7e39f2e55cf2031050248a0c/?vgnextoid=2c6924cc45ea4110VgnVCM1000009ed07898RCRD&vgnextchannel=f7280665b91ac010VgnVCM1000008049a8c0RCRD&vgnextfmt=print.
[16] Matt Daly, *53 Senators Urge Approval of Keystone XL Pipeline*, USA Today (Jan. 23, 2013), *available at* http://www.usatoday.com/story/news/politics/2013/01/23/senators-urge-approval-keystone-pipeline/1860003/.
[17] Pew Research Center, Continued Support for Keystone XL Pipeline (Sept. 26, 2013), available at http://www.people-press.org/2013/09/26/continued-support-for-keystone-xl-pipeline/.
[18] Federal Highway Administration, Motor-Fuel Use 2012, *available at* http://www.fhwa.dot.gov/policyinformation/statistics/2012/pdf/mf21.pdf.
[19] U.S. Energy Information Administration, Florida State Profile and Energy Estimates, *available at* http://www.eia.gov/state/analysis.cfm?sid=FL.

Project would reinforce our strong relationship with Canada and ensure America's energy security.[20]

Opponents of the Keystone XL Pipeline assert that the potential environmental impacts outweigh the economic benefits. In Florida, the opposition appears to center around claims that the completion of the Pipeline will increase the rate of greenhouse emissions because the method of extracting tar sand oil employed in producing oil for the Project will produce more gasses than traditional methods of producing oil. Opponents argue that these emissions cause potential risks including economic loss, biodiversity loss, food and water shortages, health issues, extreme weather, storms, and sea level rise. Finally, the opposition states that because Florida's environmental and economic industries, like tourism, rely on clean shorelines and water, increasing pollution via fossil fuel emissions could hinder these kinds of industries.[21]

III. Effect of Proposed Changes:

HM 281 urges the President to issue final approval of the Keystone XL pipeline Project.

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.

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[20] Kevin Doyle, *Keystone Pipeline Important to Florida*, StAugustine.com (June 26, 2013), *available at* http://staugustine.com/opinions/2013-06-26/guest-column-keystone-xl-pipeline-important-florida#.UvKBWvldW9U.

[21] *See*, CREDO Action, Sign the Keystone XL Pledge of Resistance, *available at* http://act.credoaction.com/sign/kxl_pledge and Keystone XL Pipeline, available at http://florida.sierraclub.org/northeast/issues/articles/XLPipeline.html.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the U.S. Congress or the President to act on a particular subject.

VIII. Statutes Affected:

This bill does not affect the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

House Memorial

A memorial to the President of the United States, urging the President to issue final approval for construction and completion of the Keystone XL pipeline project.

WHEREAS, Floridians consume approximately 26 million gallons of gasoline and diesel fuel daily and approximately 9.5 billion gallons of gasoline and diesel fuel annually, and

WHEREAS, across party lines, Floridians have long recognized the dependence of the state's tourism and agricultural economy on access to reliable and affordable petroleum products, and

WHEREAS, many other Florida industries, including fertilizer, agrochemical, plastic, manufacturing, bakeries, juice processing, pulp and paper, road construction, metals, restaurants, and grocery stores, are heavily dependent on access to reliable and affordable petroleum products to transport goods, and

WHEREAS, Gulf state refineries produce the vast majority of the gasoline and diesel fuel crude oil delivered and consumed in Florida, and

WHEREAS, the Keystone XL pipeline will be capable of transporting more than 800,000 barrels of crude oil per day to 57 Gulf state refineries, and

FLORIDA HOUSE OF REPRESENTATIVES

HM 281 2014

WHEREAS, the crude oil transported through the Keystone XL pipeline could replace oil from unstable regions of the world with oil from Canada, a friendly and historically reliable neighbor and our principal source of imported crude oil, and

WHEREAS, according to the United States Department of Transportation Pipeline and Hazardous Material Safety Administration, pipelines are one of the safest and most cost-effective means to transport petroleum products, and

WHEREAS, the Keystone XL pipeline could reduce the large numbers of tankers and barges carrying crude oil through the Straits of Florida and across the Gulf of Mexico, and

WHEREAS, the Keystone XL pipeline will not encounter the disruptions experienced by tankers and barges delivering crude oil to Gulf state refineries during hurricanes in the Gulf of Mexico, thus enhancing Florida's energy security during emergencies, and

WHEREAS, the southern portion of the Keystone XL pipeline has already been approved and construction is proceeding, and

WHEREAS, according to the United States Department of State, construction of the United States portion of the Keystone XL pipeline is a $3.3 billion project that will create thousands of American jobs, and

WHEREAS, the Keystone XL pipeline project has been subject to the most thorough public consultation process of any proposed United States pipeline, and

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

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WHEREAS, according to the Supplementary Environmental Impact Statement issued by the United States Department of State, multiple environmental impact statements and studies have concluded that the Keystone XL pipeline poses the least impact to the environment and is much safer than other modes of transporting crude oil, and

WHEREAS, the Keystone XL pipeline project has received bipartisan support in the United States Congress, including a letter to the President signed by 53 Senators urging the President to support the pipeline, and

WHEREAS, a recent Pew Research Center survey has found that two-thirds of Americans support the Keystone XL pipeline project, NOW, THEREFORE,

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

That the President of the United States is strongly urged to issue final approval for construction and completion of the Keystone XL pipeline project.

BE IT FURTHER RESOLVED that copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

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:	HB 7145
INTRODUCER:	House Rulemaking Oversight and Repeal Subcommittee and Representative Gaetz
SUBJECT:	Ratification of Rule of the Department of Health
DATE:	April 17, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Phelps	RC	**Pre-meeting**

I. Summary:

HB 7145 provides legislative ratification of the Department of Health, Rule 64J-2.006 of the Florida Administrative Code, Trauma Registry and Trauma Quality Improvement Program. The rule amendment requires Level I and Level II verified trauma centers to maintain participation in the American College of Surgeons, Trauma Quality Improvement Program (ACS-TQIP). The ACS-TQIP is a national benchmarking tool that provides feedback to participating trauma centers on their relative performance in order to improve the quality of care of trauma patients.

The Department of Health (DOH or department) filed the rule amendment for adoption on July 12, 2013. The Statement of Estimated Regulatory Costs (SERC) for the rule showed an estimated increase in regulatory costs in excess of $1 million in the aggregate for a 5-year period. Accordingly, the rule must be ratified by the Legislature before it may go into effect.

II. Present Situation:

Rulemaking and Legislative Ratification

A rule is an agency statement of general applicability interpreting, implementing, or prescribing law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.[1] Rulemaking authority is delegated by the Legislature[2] through statute and authorizes an agency to "adopt, develop, establish, or otherwise create"[3] a rule. To adopt a rule an agency must have a general grant of authority to implement a specific law by rulemaking.[4] The specific statute being interpreted or implemented through rulemaking must provide specific

[1] Section 120.52(16); *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1st DCA 2007).
[2] *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1st DCA 2000).
[3] Section 120.52(17), F.S.
[4] Section 120.52(8), F.S., and s. 120.536(1), F.S.

standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.[5]

An agency begins the formal rulemaking process by giving notice of rule development and the proposed rule.[6] The notice of the proposed rule is published in the Florida Administrative Register[7] (FAR) which must provide certain information, including the text of the proposed rule, a summary of the agency's statement of estimated regulatory costs (SERC) if one is prepared, how a party may request a public hearing on the proposed rule, and a proposed effective date.

An agency proposing a rule is required to prepare a SERC of the proposed rule if the proposed rule: will have an adverse impact on small business; or is likely to directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate in this state within 1 year after the implementation of the rule.[8]

If the SERC is required, it must include an economic analysis projecting the proposed rule's adverse effect over a 5-year period from when the rule goes into effect. The economic analysis must first address the rule's likely adverse impact on economic growth, private-sector job creation or employment, or private-sector investment.[9] Next is the likely adverse impact on business competitiveness,[10] productivity, or innovation.[11] Finally, the analysis must discuss whether the rule is likely to increase regulatory costs, including any transactional costs.[12] If the analysis shows the projected impact of the proposed rule in any one of these areas will exceed $1 million in the aggregate for the 5-year period, the rule cannot go into effect until ratified by the Legislature pursuant to s. 120.541(3), F.S.[13]

Present law distinguishes between a rule being "adopted" and becoming enforceable or "effective."[14] A rule must be filed for adoption before it may go into effect.[15] A rule projected in the SERC to have a specific economic impact exceeding $1 million in the aggregate over 5 years,[16] which requires ratification by the Legislature before going into effect, will typically specify in the FAR that the proposed effective date of the rule is upon legislative ratification.

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[5] *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).
[6] Section 120.54(2)(a) and (3)(a)1, F.S.
[7] Sections 120.54(3)(a)2., 120.55(1)(b)2, F.S. The FAR is maintained by the Department of State and is available online at: https://www.flrules.org/Default.asp, (Last visited April 15, 2014).
[8] *See* ss. 120.54(3)(b)1., and 120.541(1)(b), F.S.
[9] Section 120.541(2)(a)1., F.S.
[10] Including the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.
[11] Section 120.541(2)(a) 2., F.S.
[12] Section 120.541(2)(a) 3., F.S.
[13] Chapter 2010-279, Laws of Florida (L.O.F.), became effective on November 17, 2010, when the Legislature over-rode the Governor's veto of CS/CS/HB 1565, which was passed during the 2010 Regular Session. House Joint Resolution 9-A passed during the 2010A Special Session on November 16, 2010.
[14] Section 120.54(3)(e)6. 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.
[15] Section 120.54(3)(e)6., F.S.
[16] Section 120.541(2)(a), F.S.

Trauma Centers

The regulation of trauma centers in Florida is established under part II of ch. 395, F.S. Trauma centers treat individuals who have incurred single or multiple injuries because of blunt or penetrating means or burns, and who require immediate medical intervention or treatment. Currently, there are 27 verified and provisional trauma centers in the state, two of which are pediatric-only trauma centers.[17]

Trauma centers in Florida are divided into several categories including Level I, Level II, and Pediatric trauma centers.

- A Level I trauma center is defined as a trauma center that:
  - Has formal research and education programs for the enhancement of trauma care; is verified by the Department of Health (DOH) to be in substantial compliance with Level I trauma center and pediatric trauma center standards; and has been approved by the DOH to operate as a Level I trauma center;
  - Serves as a resource facility to Level II trauma centers, pediatric trauma centers, and general hospitals through shared outreach, education, and quality improvement activities; and
  - Participates in an inclusive system of trauma care, including providing leadership, system evaluation, and quality improvement activities.[18]
- A Level II trauma center is defined as a trauma center that:
  - Is verified by the DOH to be in substantial compliance with Level II trauma center standards and has been approved by the DOH to operate as a Level II trauma center or is designated pursuant to s. 395.4025(14) F.S.;
  - Serves as a resource facility to general hospitals through shared outreach, education, and quality improvement activities; and
  - Participates in an inclusive system of trauma care.[19]
- A Pediatric trauma center is defined as a hospital that is verified by the DOH to be in substantial compliance with pediatric trauma center standards and has been approved by the DOH to operate as a pediatric trauma center.[20,21]

The department is required to adopt, by rule, standards for verification of trauma centers based on national guidelines, including those established by the American College of Surgeons entitled "Hospital and Prehospital Resources for Optimal Care of the Inured Patient" and published appendices thereto.
Trauma centers, whether approved or provisional,[22] must submit trauma registry data required by rule for the department to monitor patient outcomes and ensure compliance with the standards of

[17] *See* http://www.floridahealth.gov/licensing-and-regulation/trauma-system/_documents/%20traumacenterlisting2014.pdf, (last visited April 15, 2014).
[18] Section 395.4001(6), F.S.
[19] Section 395.4001(7), F.S.
[20] Section 395.4001(8), F.S.
[21] For Level I, Level II, and pediatric trauma center standards *see* http://www.floridahealth.gov/licensing-and-regulation/trauma-system/_documents/%20traumacntrstandpamphlet150-9-2009rev1-14-10.pdf (last visited April 15, 2014).
[22] A provisional trauma center has submitted an application found acceptable by the department based on provisional review of critical elements required for a provisional trauma center as set forth in Rule 64J-2.012, F.A.C. and Department of Health Pamphlet 50-9, and may operate as a provisional trauma center pending onsite visits and a determination of compliance with specific standards and quality of care reviews for approval as a designated trauma center. *See* s. 395.4025, F.S.

approval.[23] Additionally, s. 395.4025(9), F.S., authorizes the department to collect trauma care and registry data, as prescribed by rule, from trauma centers.

American College of Surgeons Trauma Quality Improvement Program

The mission of the American College of Surgeons Committee on Trauma is to develop and implement meaningful programs for trauma care in local, regional, national, and international arenas. These programs must include education, professional development, standards of care, and assessment of outcomes.[24] The ACS-TQIP is a national benchmarking tool that provides feedback to participating trauma centers on their relative performance in order to improve the quality of care of trauma patients. It is based on the National Trauma Data Bank and uses the National Trauma Data Standard for uniformity among participating trauma centers. Components of the TQIP include: risk adjusted inter-hospital comparisons; education and training; enhanced data quality; and the sharing of best practices.[25]

Participation in the ACS-TQIP requires application and payment of an annual fee of $9,000. The trauma center must participate in the National Trauma Data Bank, comply with all data submission requirements, and update a HIPAA Business Associate Agreement and Data Use Agreement with the ACS. The trauma medical director must commit to implementation and administration of the program at the hospital, including participation, either personally or through a designee, in conference calls; web conferences; training; and attendance at the annual meeting.

Proposed Rule 64J-2.006, F.A.C.

Proposed Rule 64J-2.006, F.A.C., requires Level I and Level II verified trauma centers to maintain participation in the ACS-TQIP. Participation in this program will enable the trauma centers and the department to collect the National Trauma Data Bank data elements, which will provide the state with the ability to compare the effectiveness of Florida's system and the trauma centers' performance against national data.[26]

The proposed rule was filed with the Department of State and adopted on July 12, 2013. The effective date of the proposed rule is upon legislative ratification. The department submitted a request for legislative ratification of the proposed rule to the President of the Senate and the Speaker of the House of Representatives on February 20, 2014.

[23] *See* s. 395.404(1)(a), F.S., and Rule 64J-2.011, F.A.C., which requires compliance with submission of registry data in accordance with Rule 64J-2.006, F.A.C.
[24] The American College of Surgeons Trauma Program, homepage, found at: http://www.facs.org/trauma/ (Last visited April 15, 2014).
[25] Additional information on the TQIP may be found at: http://www.facs.org/trauma/ntdb/tqip.html and Getting Started with TQIP found at: http://www.facs.org/trauma/ntdb/tqip-gs.html (last visited April 15, 2014).
[26] Statement of Facts and Circumstances for Rule 64J-2.006, F.A.C., filed with the Department of State on July 12, 2013, a copy of which is available in the Senate Committee on Health Policy.

The SERC prepared for the proposed rule estimates the rule will likely result in an aggregate increase in regulatory costs over 5 years of $1,240,800.[27,28] Because the SERC projects the impact in increased regulatory costs of the proposed rule will exceed $1 million in the aggregate for the 5-year period, the rule cannot go into effect until ratified by the Legislature.[29]

III. Effect of Proposed Changes:

HB 7145 ratifies the DOH Rule 64J-2.006, F.A.C., Trauma Registry and Trauma Quality Improvement Program for the sole purpose of satisfying any condition on effectiveness imposed under s. 120.541(3), F.S. If the bill is enacted into law, the rule will become effective on July 1, 2014.

The bill further clarifies its purpose and effect such that the act:

- Does not alter any rulemaking authority,
- Does not constitute legislative preemption of or exception to any provision of law governing adoption or enforcement of the rule cited,
- Is intended to preserve the status of the cited rule as a rule under ch. 120, F.S., and
- Does not cure any rulemaking defect or preempt any challenge to the rule based on a lack of authority or a violation of the requirements governing the adoption of the rule cited.

The act will not be codified in the Florida Statutes. After the act becomes law, its enactment and effective dates are to be noted in the Florida Administrative Code or the Florida Administrative Register, or both, as appropriate.

The effective date of the act is July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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[27] At the time the SERC was prepared, the department stated there were 24 verified trauma centers, the annual fee for participation in the ACS-TQIP was $8,100, and annual aggregated costs for the TQIP national conference was $53,760. Accordingly, the calculation is as follows: ($8,100 annual fee) X (24 verified trauma centers) = $194,400 + ($53,760 conference fee) = $248,160 annual regulatory cost. $248,160 annual regulatory cost X 5 years = $1,240,800.

[28] Department of Health Bureau of Emergency Medical Oversight – Trauma Program Statement of Estimated Regulatory Costs, page 3, on file with the Senate Health Policy Committee.

[29] Section 120.541(3), F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

HB 7145 has no fiscal impact. However, the bill enables a proposed rule to go into effect, which will have a fiscal impact on private hospitals with a verified trauma center. The hospital will incur an annual $9,000 fee to participate in the ACS-TQIP and the cost to attend an annual conference.

C. Government Sector Impact:

The bill has no fiscal impact. However, the bill enables a proposed rule to go into effect, which will have a fiscal impact on government-owned hospitals with a verified trauma center. The hospital will incur an annual $9,000 fee to participate in the ACS-TQIP and the cost to attend an annual conference.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

IX. Additional Information:

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

None.

B. Amendments:

None.

A bill to be entitled

An act relating to ratification of rules of the Department of Health; ratifying specified rules requiring certain trauma centers to maintain participation in a specified trauma quality improvement program, 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 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 rule is ratified for the sole and exclusive purpose of satisfying any condition on effectiveness imposed under s. 120.541(3), Florida Statutes: Rule 64J-2.006, Florida Administrative Code, titled "Trauma Registry and Trauma Quality Improvement Program," as filed for adoption with the Department of State pursuant to the certification package dated July 12, 2013.

(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 authority delegated by prior law, does not constitute legislative preemption of or exception to any provision of law governing adoption or enforcement of the rules cited, and is intended to preserve the status of any cited rule as a rule under chapter 120, Florida Statutes. This act 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 rule cited.

Section 2. This act shall take effect July 1, 2014.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	HB 7163
INTRODUCER:	Rulemaking Oversight and Repeal Subcommittee and Rep. Gaetz
SUBJECT:	Ratification of Rules/Department of Juvenile Justice
DATE:	April 15, 2014 REVISED:

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Dugger	Phelps	RC	**Pre-meeting**

I. Summary:

HB 7163 ratifies several administrative rules that the Department of Juvenile Justice (DJJ) has recently adopted, resulting in them becoming effective. On February 24, 2014, the DJJ adopted Chapters 63M-2 and 63N-1, implementing a legislative mandate to adopt rules ensuring the effective provision of ordinary medical care, mental health services, substance abuse treatment services, and services to youth with developmental disabilities.

The statutorily required Statement of Estimated Regulatory Costs (SERC) showed that Rules 63M-2.0052, 63M-2.006, 63N-1.0076, 63N-1.0084, and 63N-1.0085, F.A.C., each impose regulatory costs exceeding $1 million over the first 5 years the rule is in effect. Accordingly, these rules must be ratified by the Legislature before they can become effective.

The scope of the bill is limited to this rulemaking condition and does not adopt the substance of any rule into the statutes. It is effective upon becoming law.

II. Present Situation:

Rulemaking Authority and Legislative Ratification

A rule is an agency statement of general applicability interpreting, implementing, or prescribing law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.[1] Rulemaking authority is delegated by the Legislature[2] through statute and authorizes an agency to "adopt, develop, establish, or otherwise create"[3] a rule. Agencies do not have discretion whether to engage in rulemaking.[4] To adopt a rule an agency must have a general

[1] Section 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1st DCA 2007).
[2] *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1st DCA 2000).
[3] Section 120.52(17), F.S.
[4] Section 120.54(1)(a), F.S.

grant of authority to implement a specific law by rulemaking.[5] The grant of rulemaking authority itself need not be detailed.[6] 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.[7]

An agency begins the formal rulemaking process by giving notice of the proposed rule.[8] The notice is published by the Department of State in the Florida Administrative Register[9] and must provide certain information, including the text of the proposed rule, a summary of the agency's statement of estimated regulatory costs (SERC) if one is prepared, and how a party may request a public hearing on the proposed rule. 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.[10]

The economic analysis mandated for each SERC must analyze a rule's potential impact over the 5 year period from when the rule goes into effect. First is the rule's likely adverse impact on economic growth, private-sector job creation or employment, or private-sector investment.[11] Next is the likely adverse impact on business competitiveness,[12] productivity, or innovation.[13] Finally, the analysis must discuss whether the rule is likely to increase regulatory costs, including any transactional costs.[14] If the analysis shows the projected impact of the proposed rule in any one of these areas will exceed $1 million in the aggregate for the 5 year period, the rule cannot go into effect until ratified by the Legislature pursuant to s. 120.541(3), F.S.

Current law distinguishes between a rule being "adopted" versus becoming enforceable or "effective."[15] A rule must be filed for adoption before it may go into effect[16] and cannot be filed for adoption until completion of the rulemaking process.[17] A rule projected to have a specific economic impact exceeding $1 million in the aggregate over 5 years[18] must be ratified by the Legislature before going into effect.[19] Since a rule submitted under s. 120.541(3), F.S., becomes effective if ratified by the Legislature, a rule must be filed for adoption before being submitted for legislative ratification.

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[5] Sections 120.52(8) and 120.536(1), F.S.
[6] *Save the Manatee Club, Inc.*, supra at 599.
[7] *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).
[8] Section 120.54(3)(a)(1), F.S.
[9] Sections 120.54(3)(a)(2) and 120.55(1)(b)(2), F.S.
[10] Section 120.541(2)(a), F.S.
[11] Section 120.541(2)(a)(1), F.S.
[12] Including the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.
[13] Section 120.541(2)(a)(2), F.S.
[14] Section 120.541(2)(a)(3), F.S.
[15] 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.
[16] Section 120.54(3)(e)(6), F.S.
[17] Section 120.54(3)(e), F.S.
[18] Section 120.541(2)(a), F.S.
[19] Section 120.541(3), F.S.

Health Care Services to Youth Served by the DJJ

In 2012, the Legislature amended ss. 985.03 and 985.64, F.S., defining "ordinary medical care" and requiring the DJJ to adopt rules to ensure effective provision of ordinary medical care, mental health services, substance abuse treatment services, and services to youth with developmental disabilities. On February 24, 2014, the DJJ filed for adoption of its rule chapters implementing this mandate. The rules reflect existing policies, practices, and procedures of the DJJ. Therefore, they are not expected to change the procedures used in providing the affected services or change the cost of providing those services.

However, the DJJ's SERC states that the adopted preparation, review, and signature requirements for forms do impose transactional costs on affected entities. As a consequence, five of the rules appear to have a regulatory impact exceeding the threshold requiring legislative ratification under s. 120.541, F.S. The SERC for Chapter 63M-2, F.A.C., appears to estimate a total annual impact of $1,396,514.70. The SERC for Chapter 63N-1, F.A.C., appears to estimate a total annual impact of $1,465,423.18.[20]

Impact of Rules

Chapter 63M-2, F.A.C., regulates Health Services in the Medical Division of the DJJ.

- Rule 63M-2.0052, F.A.C., entitled "Special Consent," sets forth the circumstances in which parental consent and informed consent is and is not required.
- Rule 63M-2.006, F.A.C., entitled "Sick Call," mandates the procedures used in DJJ facilities to ensure that youth with a medical concern will have access to care.

Chapter 63N-1, F.A.C., regulates Service Delivery with respect to Mental Health/Substance Abuse/Developmental Disability Services.

- Rule 63N-1.0076, F.A.C., entitled "Review and Updating of Individualized Mental Health Treatment Plans, Individualized Substance Abuse Treatment Plans and Integrated Mental Health and Substance Abuse Treatment Plans," regulates the review and updating of the affected plans including the frequency and nature of the review.
- Rule 63N-1.0084, F.A.C., entitled "Documentation of Mental Health and Substance Abuse Treatment Services," regulates the documentation of progress and treatment with respect to such services.
- Rule 63N-1.0085, F.A.C., entitled "Psychiatric Services," regulates the provision of psychiatric services for treatment of serious mental disorders in detention centers and residential commitment programs.

III. Effect of Proposed Changes:

The bill ratifies the DJJ Rules 63M-2.0052, 63M-2.006, 63N-1.0076, 63N-1.0084, and 63N-1.0085, F.A.C., allowing them to become effective. HB 7163 expressly limits ratification to the effectiveness of the rules. It also provides that the act shall not be codified in the Florida Statutes,

[20] Copies of the 2 SERCs are included in the Rulemaking Oversight and Repeal Subcommittee meeting materials for March 25, 2014, *available at* http://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2727&Session=2014&DocumentType=Meeting Packets&FileName=rors 3-25-14.pdf (Last visited April 15, 2014).

but only noted in the Florida Administrative Code or the Florida Administrative Register or both, as appropriate.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There are 11 providers contracted to operate residential commitment programs and 6 providers contracted to operate day treatment programs. In addition, there are 22 providers contracted to provide mental health and substance abuse services or psychiatric services in state operated detention centers and 6 contract providers providing medical services in state operated detention centers.

The DJJ's SERC estimates the rules to impact the private sector providers as follows:

The SERC for Chapter 63M-2, F.A.C., estimates impacts of $10,591.63 for each of 11 contract providers of residential commitment programs and $31,699.63 for each of 6 contractors providing medical services in state operated detention centers.

The SERC for Chapter 63N-1, F.A.C., estimates impacts of $12,895.34 for each of the 11 contract providers of residential commitment programs and $7,951.99 for each of the 6 contract providers of day treatment programs affected by the rules. In addition, the SERC estimates impacts totaling $148,490.00 for 15 small business providers out of the 22 contractors providing services in the state operated detention centers.

These impacts, however, do not represent new economic impacts according to the DJJ because the rules impose substantially the same requirements as the DJJ's current manuals and contracts.

C. Government Sector Impact:

The bill ratifies rules that impose regulatory costs, but the DJJ asserts that the costs are already imposed through current manuals and contracts.

The DJJ's SERC estimates the regulatory impacts of the rules to be (numbers appear to reflect annual costs) as follows:

The SERC for Chapter 63M-2, F.A.C., estimates total impacts of $665,692.23 for detention centers and $730,822.47 for residential commitment programs. The SERC estimates a total impact of $1,396,514.70. (These costs include the private sector impacts discussed above.)

The SERC for Chapter 63N-1, F.A.C., estimates impacts of $16,809.00 for each of the 21 detention centers, $12,895.34 for each of the 69 residential commitment programs and $7,951.99 for each of the 28 day treatment programs affected by the rules. The SERC estimates a total impact of $1,465,423.18. (These costs include the private sector impacts discussed above.)

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None. The bill provides that the act shall not be codified in the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

A bill to be entitled

An act relating to ratification of rules of the Department of Juvenile Justice; ratifying specified rules relating to the provision of health services to youth in facilities or programs, 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 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) Rule 63M-2.0052, Florida Administrative Code, entitled "Special Consent," as filed for adoption with the Department of State pursuant to the certification package dated February 24, 2014.

(b) Rule 63M-2.006, Florida Administrative Code, entitled "Sick Call," as filed for adoption with the Department of State pursuant to the certification package dated February 24, 2014.

(c) Rule 63N-1.0076, Florida Administrative Code, entitled "Review and Updating of Individualized Mental Health Treatment

FLORIDA HOUSE OF REPRESENTATIVES

HB 7163 2014

Plans, Individualized Substance Abuse Treatment Plans and Integrated Mental Health and Substance Abuse Treatment Plans," as filed for adoption with the Department of State pursuant to the certification package dated February 24, 2014.

(d) Rule 63N-1.0084, Florida Administrative Code, entitled "Documentation of Mental Health and Substance Abuse Treatment Services," as filed for adoption with the Department of State pursuant to the certification package dated February 24, 2014.

(e) Rule 63N-1.0085, Florida Administrative Code, entitled "Psychiatric Services," as filed for adoption with the Department of State pursuant to the certification package dated February 24, 2014.

(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 authority delegated by prior law, does not constitute legislative preemption of or exception to any provision of law governing adoption or enforcement of the rules cited, and is intended to preserve the status of any cited rule as a rule under chapter 120, Florida Statutes. This act 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 rule cited.

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

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

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