

Tab 1	CS/SB 298 by CJ, Evers ; (Compare to CS/H 0151) Installation of Tracking Devices or Tracking Applications					
155268	D	S	RCS	RC, Lee	Delete everything after	02/24 03:19 PM
449336	AA	S	RCS	RC, Lee	Delete L.35:	02/24 03:19 PM
Tab 2	SM 600 by Thompson ; (Identical to H 0333) Recognition of Haitian Independence Day, Haitian Flag Day, and Haitian Heritage Month					
Tab 3	SB 612 by Hays ; (Identical to H 4009) Slungshot					
Tab 4	CS/CS/SB 776 by GO, CU, Bradley ; (Identical to CS/CS/H 1025) Public Records/Utility Information or Industrial Control Technology Systems Security					
Tab 5	CS/SB 960 by TR, Bradley ; (Identical to CS/H 1087) Protection of Motor Vehicle Dealers' Consumer Data					
Tab 6	CS/CS/SB 1652 by FT, CA, Bradley, Bean (CO-INTRODUCERS) Hutson ; (Similar to CS/1ST ENG/H 1297) Discretionary Sales Surtaxes					
Tab 7	CS/CS/SB 912 by FP, CJ, Flores (CO-INTRODUCERS) Soto, Montford ; (Similar to CS/CS/H 0761) Fraudulent Activities Associated with Payment Systems					
187276	A	S	RCS	RC, Negron	Delete L.99 - 376:	02/24 03:19 PM
Tab 8	CS/SB 1104 by BI, Flores ; (Compare to CS/H 0897) Service of Process on Financial Institutions					
727518	A	S	L RCS	RC, Diaz de la Portilla	Delete L.63:	02/24 03:19 PM
Tab 9	CS/SB 1156 by CA, Hutson ; (Similar to CS/H 0971) Community Development Districts					
Tab 10	SJR 1424 by Bean ; (Identical to H 1129) Election of Secretary of State/Membership of Cabinet					
Tab 11	CS/SB 1432 by JU, Stargel ; (Similar to CS/CS/H 1231) Service of Process					
647180	A	S		RC, Negron	btw L.34 - 35:	02/22 12:31 PM
Tab 12	CS/SB 7000 by FP, CA ; (Compare to CS/CS/H 1361) Local Development					
925234	A	S	RCS	RC, Diaz de la Portilla	Delete L.23 - 65:	02/24 03:20 PM
Tab 13	SB 7022 by CJ ; OGSR/Depictions or Recordings of the Killing of a Law Enforcement Officer					
Tab 14	CS/SB 342 by BI, Gibson ; (Compare to CS/H 0237) Renters Insurance					
Tab 15	CS/CS/SB 948 by FP, CM, Richter ; (Similar to CS/CS/H 0739) Secondhand Dealers					
626212	A	S	RS	RC, Richter	Delete L.42 - 100:	02/24 03:20 PM
458392	SA	S	RCS	RC, Richter	Delete L.38 - 100:	02/24 03:20 PM
Tab 16	CS/SB 1034 by JU, Simmons ; (Similar to CS/H 1431) Health Care Providers					

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

RULES
Senator Simmons, Chair
Senator Soto, Vice Chair

MEETING DATE: Wednesday, February 24, 2016
TIME: 10:00 a.m.—12:00 noon
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Simmons, Chair; Senator Soto, Vice Chair; Senators Benacquisto, Diaz de la Portilla, Gaetz, Galvano, Gibson, Joyner, Latvala, Lee, Montford, Negron, and Richter

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 298 Criminal Justice / Evers (Compare CS/H 151)	Installation of Tracking Devices or Tracking Applications; Revising exceptions to the prohibition on installation of tracking devices or tracking applications; authorizing the Florida Department of Corrections and the Florida Department of Juvenile Justice to lawfully install a tracking device or tracking application on another person's property as part of a criminal investigation; specifying circumstances in which a private investigator is authorized to or prohibited from installing a tracking device or tracking application, etc. CJ 10/20/2015 Not Considered CJ 11/02/2015 Fav/CS ACJ 12/03/2015 Favorable RC 02/10/2016 Not Considered RC 02/24/2016 Fav/CS	Fav/CS Yeas 10 Nays 1
With subcommittee recommendation - Criminal and Civil Justice			
2	SM 600 Thompson (Identical HM 333, Compare CS/HM 69, HR 9057, SM 568)	Recognition of Haitian Independence Day, Haitian Flag Day, and Haitian Heritage Month; Urging Congress to annually recognize January 1 as "Haitian Independence Day," May 18 as "Haitian Flag Day," and the month of May as "Haitian Heritage Month", etc. CM 02/16/2016 Favorable RC 02/24/2016 Not Considered	Not Considered
3	SB 612 Hays (Identical H 4009)	Slungshot; Revising the definition of the term "concealed weapon" to delete its inclusion of a slungshot; deleting provisions prohibiting the manufacture or sale of any instrument or weapon usually known as a slungshot; deleting a provision prohibiting a dealer in arms from selling or transferring a slungshot to a minor, etc. CJ 02/01/2016 Favorable CM 02/16/2016 Favorable RC 02/24/2016 Favorable	Favorable Yeas 11 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Wednesday, February 24, 2016, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/CS/SB 776 Governmental Oversight and Accountability / Communications, Energy, and Public Utilities / Bradley (Identical CS/CS/H 1025)	Public Records/Utility Information or Industrial Control Technology Systems Security; Providing an exemption from public records requirements for information related to the security of information technology systems or industrial control technology systems of a utility owned or operated by a unit of local government; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CU 02/02/2016 Fav/CS GO 02/16/2016 Fav/CS RC 02/24/2016 Favorable	Favorable Yeas 12 Nays 0
5	CS/SB 960 Transportation / Bradley (Identical CS/H 1087)	Protection of Motor Vehicle Dealers' Consumer Data; Requiring that a licensee or a third party comply with certain restrictions on reuse or disclosure of consumer data received from a motor vehicle dealer; requiring that upon request of a motor vehicle dealer a licensee provide a list of the consumer data obtained and all persons to whom any of the data has been disclosed, subject to certain requirements; requiring the licensee to indemnify the motor vehicle dealer for certain claims or damages, etc. TR 01/20/2016 Fav/CS CM 02/01/2016 Favorable RC 02/24/2016 Favorable	Favorable Yeas 12 Nays 0
6	CS/CS/SB 1652 Finance and Tax / Community Affairs / Bradley / Bean (Similar CS/H 1297)	Discretionary Sales Surtaxes; Authorizing a county to apply proceeds of a pension liability surtax toward reducing the unfunded liability of a defined benefit retirement plan or system; authorizing a county to levy a pension liability surtax by ordinance if certain conditions are met; specifying the manner in which a local government may use the surtax proceeds, etc. CA 01/26/2016 Fav/CS FT 02/08/2016 Fav/CS RC 02/24/2016 Favorable	Favorable Yeas 12 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Wednesday, February 24, 2016, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	CS/CS/SB 912 Fiscal Policy / Criminal Justice / Flores (Similar CS/CS/H 761)	Fraudulent Activities Associated with Payment Systems; Revising the felony classification for unlawful conveyance of fuel; requiring retail petroleum fuel measuring devices fitted with scanning devices to have certain security measures; requiring the owner or operator of a device to have certain security measures in place within a specified timeframe upon notice from the Department of Agriculture and Consumer Services; revising the prohibition against trafficking in or possession of counterfeit credit cards, etc. CJ 01/25/2016 Fav/CS AGG 02/11/2016 Favorable FP 02/17/2016 Fav/CS RC 02/24/2016 Fav/CS	Fav/CS Yeas 10 Nays 0
8	CS/SB 1104 Banking and Insurance / Flores (Compare CS/H 897)	Service of Process on Financial Institutions; Requiring service on financial institutions to be made in accordance with s. 655.0201, F.S.; revising applicability of provisions of law governing service of process on financial institutions; authorizing certain financial institutions to designate with the Department of State a place or registered agent within the state as the sole location or agent for service of process, notice, levy, or demand, etc. BI 02/09/2016 Fav/CS JU 02/16/2016 Favorable RC 02/24/2016 Fav/CS	Fav/CS Yeas 10 Nays 0
9	CS/SB 1156 Community Affairs / Hutson (Similar CS/H 971)	Community Development Districts; Increasing minimum and maximum size requirements for the establishment of community development districts under certain circumstances; revising requirements related to the process of amending community development district boundaries; authorizing up to a certain number of districts to merge into one surviving district, subject to certain requirements, etc. CA 01/19/2016 Fav/CS CM 02/16/2016 Favorable RC 02/24/2016 Favorable	Favorable Yeas 10 Nays 0
10	SJR 1424 Bean (Identical HJR 1129)	Election of Secretary of State/Membership of Cabinet; Proposing amendments to the State Constitution to provide for the election of the Secretary of State and the inclusion of the secretary as a member of the Cabinet, etc. EE 02/02/2016 Favorable GO 02/16/2016 Favorable RC 02/24/2016 Favorable	Favorable Yeas 11 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Wednesday, February 24, 2016, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	CS/SB 1432 Judiciary / Stargel (Similar CS/CS/H 1231)	Service of Process; Expanding the locations at which substitute service of process may be made when such location is the only discoverable address for the person to be served; defining the terms "virtual office" and "executive office or mini suite", etc. JU 02/16/2016 Fav/CS RC 02/24/2016 Not Considered	Not Considered
12	CS/SB 7000 Fiscal Policy / Community Affairs (Compare CS/CS/H 1361, CS/S 1190)	Local Development; Authorizing the governing body of a county to employ tax increment financing; increasing the size of an enclave that a municipality may annex under certain circumstances; providing that a proposed development that is consistent with certain comprehensive plans is not required to undergo review pursuant to the state coordinated review process, etc. ATD 01/13/2016 Fav/CS FP 01/20/2016 Fav/CS RC 02/24/2016 Fav/CS	Fav/CS Yeas 10 Nays 0
13	SB 7022 Criminal Justice	OGSR/Depictions or Recordings of the Killing of a Law Enforcement Officer; Amending provisions which provide an exemption from public records requirements for a photograph or video or audio recording held by an agency that depicts or records the killing of a person; narrowing the exemption to depictions or recordings of the killing of a law enforcement officer who was acting in accordance with his or her official duties; removing the scheduled repeal of the exemption, etc. GO 02/16/2016 Favorable RC 02/24/2016 Favorable	Favorable Yeas 11 Nays 0
14	CS/SB 342 Banking and Insurance / Gibson (Similar S 94, Compare CS/H 237)	Renters Insurance; Requiring a residential rental agreement to specify whether renters insurance is required; specifying provisions that must be included if insurance is or is not required; providing that failure to include a certain notice in a rental agreement does not create a private cause of action or nullify any part of the rental agreement, etc. BI 01/26/2016 Fav/CS JU 02/09/2016 Favorable RC 02/24/2016 Favorable	Favorable Yeas 11 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Wednesday, February 24, 2016, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
15	CS/CS/SB 948 Fiscal Policy / Commerce and Tourism / Richter (Similar CS/CS/H 739)	Secondhand Dealers; Requiring that the record of a secondhand dealer transaction include digital photos of the items; revising the required holding period for certain goods acquired by a dealer; authorizing an action in replevin against a secondhand dealer based on a right of possession to stolen goods; revising the period of time a secondhand dealer must hold secondhand goods at a registered location, etc. CM 01/19/2016 Fav/CS JU 02/09/2016 Favorable FP 02/17/2016 Fav/CS RC 02/24/2016 Fav/CS	Fav/CS Yeas 11 Nays 0
16	CS/SB 1034 Judiciary / Simmons (Similar CS/H 1431, Compare CS/S 178)	Health Care Providers; Revising the definitions of the terms "contract" and "health care provider"; extending sovereign immunity to employees or agents of a health care provider that executes a contract with a governmental contractor; requiring the posting of notice that a specified health care provider is an agent of a governmental contractor; revising the definition of the term "officer, employee, or agent" to include employees or agents of a health care provider, etc. HP 01/19/2016 Favorable JU 02/09/2016 Not Considered JU 02/16/2016 Fav/CS RC 02/24/2016 Favorable	Favorable Yeas 10 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 298

INTRODUCER: Rules Committee; Criminal Justice Committee; and Senator Evers

SUBJECT: Installation of Tracking Devices or Tracking Applications

DATE: February 24, 2016

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Cannon	CJ	Fav/CS
2. Clodfelter	Sadberry	ACJ	Recommend: Favorable
3. Erickson	Phelps	RC	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 298 amends s. 934.425, F.S., which generally prohibits the installation of tracking devices and tracking applications without the consent of the property owner. Currently, the law prohibits private investigators from installing tracking devices or tracking applications unless the law authorizes the investigator's client to perform such installation.

The bill provides that a person or business entity that is exempt from the installation prohibition under any of the following current exemptions may hire a private investigator to install a tracking device or tracking application consistent with the applicable exemption:

- A parent or legal guardian installing such device or application on his or her minor child's property (subject to specific criteria being met);
- A caregiver of an elderly person or disabled adult installing such device or application on the elderly person's or disabled adult's property (subject to specific criteria being met); or
- An owner or lessee of a motor vehicle installing, or directing the installation of, such device or application on the vehicle during the period of ownership or lease (subject to certain criteria being met).

The bill also provides that a private investigator may install a tracking device or tracking application pursuant to a lawful court order.

II. Present Situation:

The General Prohibition on Installation of Tracking Devices or Tracking Applications and Exceptions to This Prohibition

Section 934.425, F.S., was created by ch. 2015-137, L.O.F. Section 934.425(2), F.S., generally prohibits a person¹ from knowingly installing a tracking device² or tracking application³ on another person's property without the other person's consent.⁴ A person who violates s. 934.425, F.S., commits a second degree misdemeanor.⁵

Section 934.425(4), provides that the section does not apply to:

- A law enforcement officer (as defined in s. 943.10, F.S.), or any local, state, federal, or military law enforcement agency, that lawfully installs a tracking device or tracking application on another person's property as part of a criminal investigation.
- A parent or legal guardian of a minor child who installs a tracking device or tracking application on the minor child's property if:
 - The parents or legal guardians are lawfully married to each other and are not separated or otherwise living apart, and either parent or legal guardian consents to the installation of the tracking device or tracking application;
 - The parent or legal guardian is the sole surviving parent or legal guardian of the minor child;
 - The parent or legal guardian has sole custody of the minor child; or
 - The parents or legal guardians are divorced, separated, or otherwise living apart and both consent to the installation of the tracking device or tracking application.
- A caregiver of an elderly person or disabled adult (as those terms are defined in s. 825.101, F.S.), if the elderly person's or disabled adult's treating physician certifies that the installation of a tracking device or tracking application onto the elderly person's or disabled adult's property is necessary to ensure the safety of the elderly person or disabled adult.
- A person acting in good faith on behalf of a business entity⁶ for a legitimate business purpose. *However, relevant to the bill, this "good faith" exception does not apply to a person engaged in a private investigation (as defined in s. 493.6101, F.S.) on behalf of another person unless such activities would otherwise be exempt under subsection (4) if performed by the person engaging the private investigator.*

¹ "Person" means an individual but does not include a business entity. Section 934.425(1)(d), F.S.

² "Tracking device" means any device whose primary purpose is to reveal its location or movement by the transmission of electronic signals. Section 934.425(1)(c), F.S.

³ "Tracking application" means any software program whose primary purpose is to track or identify the location or movement of an individual. Section 934.425(1)(b), F.S.

⁴ Section 943.425(3), F.S., provides that a person's consent is presumed to be revoked if: (a) the consenting person and the person to whom consent was given are lawfully married and one person files a petition for dissolution of marriage from the other; or (b) the consenting person or the person to whom consent was given files an injunction for protection against the other person pursuant to s. 741.30, F.S., s. 741.315, F.S., s. 784.046, F.S., or s. 784.0485, F.S.

⁵ Section 934.425(5), F.S. A second degree misdemeanor is punishable by up to 60 days in a county jail and a fine of up to \$500. Sections 775.082 and 775.083, F.S.

⁶ "Business entity" means any form of corporation, partnership, association, cooperative, joint venture, business trust, or sole proprietorship that conducts business in this state. Section 934.425(1)(a), F.S.

- An owner or lessee of a motor vehicle that installs, or directs the installation of, a tracking device or tracking application on such vehicle during the period of ownership or lease, provided that:
 - The tracking device or tracking application is removed before the vehicle's title is transferred or the vehicle's lease expires;
 - The new owner of the vehicle, in the case of a sale, or the lessor of the vehicle, in the case of an expired lease, consents in writing to the nonremoval of the tracking device or tracking application; or
 - The owner of the vehicle at the time of the installation of the tracking device or tracking application was the original manufacturer of the vehicle.

Grounds for Disciplinary Action

Section 493.6118, F.S., specifies grounds for which disciplinary action may be taken by the Department of Agriculture and Consumer Services against any licensee, agency, or applicant regulated by ch. 493, F.S. (private investigative, private security, and repossession services), or any unlicensed person engaged in activities regulated under this chapter. One of the grounds for disciplinary action is the installation of a tracking device or tracking application in violation of s. 934.425, F.S.⁷

III. Effect of Proposed Changes:

The bill amends s. 934.425, F.S., which generally prohibits a person from knowingly installing a tracking device or tracking application on another person's property without the other person's consent. Currently, the law prohibits private investigators from installing tracking devices or tracking applications unless the law authorizes the investigator's client to perform such installation.

The bill provides that a person or business entity that is exempt from the installation prohibition under any of the following current exemptions may hire a private investigator to install a tracking device or tracking application consistent with the applicable exemption:

- A parent or legal guardian installing such device or application on his or her minor child's property (subject to specific criteria being met);⁸
- A caregiver of an elderly person or disabled adult installing such device or application on the elderly person's or disabled adult's property (subject to specific criteria being met);⁹ or
- An owner or lessee of a motor vehicle installing, or directing the installation of, such device or application on the vehicle during the period of ownership or lease (subject to certain criteria being met).¹⁰

The bill also provides that a private investigator may install a tracking device or tracking application pursuant to a lawful court order.

The bill takes effect on October 1, 2016.

⁷ See ch. 2015-137, L.O.F.

⁸ Section 934.425(4)(b), F.S

⁹ Section 934.425(4)(c), F.S

¹⁰ Section 934.425(4)(e), F.S

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Because the offense is a second degree misdemeanor, the Criminal Justice Impact Conference determined that the bill as originally filed would have no impact on the state prison population. The amendments incorporated in CS/CS/SB 298 would not change this determination. Any other fiscal impact on the criminal justice system would be insignificant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 934.425 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.)

CS/CS by Rules on February 24, 2016:

- Authorizes a person or business entity that is exempt under any of the following exemptions from the installation prohibition to hire a private investigator to install a tracking device or tracking application consistent with the applicable exemption:
 - A parent or legal guardian installing such device or application on his or her minor child's property (subject to specific criteria being met);
 - A caregiver of an elderly person or disabled adult installing such device or application on the elderly person's or disabled adult's property (subject to specific criteria being met); or
 - An owner or lessee of a motor vehicle installing, or directing the installation of, such device or application on the vehicle during the period of ownership or lease (subject to certain criteria being met).
- Authorizes a private investigator to install a tracking device or tracking application pursuant to a lawful court order.
- Changes the effective date of the bill to October 1, 2016.

CS by Criminal Justice on November 2, 2015:

- Authorizes private investigators to install a tracking device or tracking application in the following circumstances:
 - If the client is already authorized to install the tracking device or tracking application under an existing exemption (current law);
 - If authorized by an order issued by a court of this state;
 - To locate a person who is a fugitive from justice; or
 - To locate lost or stolen property or locate assets awarded by the court.
- Prohibits a private investigator from installing a tracking device or tracking application on behalf of a client who is subject to a no contact order or an injunction for protection, or if the private investigator knows or has reason to know that the client is involved in the commission of a crime or an unlawful act.
- Authorizes the Department of Corrections and the Department of Juvenile Justice to install a tracking device or tracking application as part of a criminal investigation.
- Authorizes separated or divorced parents or legal guardians to install a tracking device or tracking application on their child's property if authorized by the separation or divorce decree.

B. Amendments:

None.



155268

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/24/2016	.	
	.	
	.	
	.	

The Committee on Rules (Lee) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (d) of subsection (4) of section
934.425, Florida Statutes, is amended to read:

934.425 Installation of tracking devices or tracking
applications; exceptions; penalties.—

(4) This section does not apply to:

(d) A person acting in good faith on behalf of a business
entity for a legitimate business purpose. This paragraph does



155268

12 not apply to a person engaged in private investigation, as
13 defined in s. 493.6101, on behalf of another person, except
14 that:

15 1. A person or business entity that is exempt under
16 paragraph (b), paragraph (c), or paragraph (e) may hire a
17 private investigator to install a tracking device or tracking
18 application consistent with the applicable exemption.

19 2. A private investigator may install a tracking device or
20 tracking application pursuant to a lawful court order unless
21 ~~such activities would otherwise be exempt under this subsection~~
22 ~~if performed by the person engaging the private investigator.~~

23 Section 2. For the purpose of incorporating the amendment
24 made by this act to section 934.425, Florida Statutes, in a
25 reference thereto, paragraph (y) of subsection (1) of section
26 493.6118, Florida Statutes, is reenacted to read:

27 493.6118 Grounds for disciplinary action.—

28 (1) The following constitute grounds for which disciplinary
29 action specified in subsection (2) may be taken by the
30 department against any licensee, agency, or applicant regulated
31 by this chapter, or any unlicensed person engaged in activities
32 regulated under this chapter.

33 (y) Installation of a tracking device or tracking
34 application in violation of s. 934.425.

35 Section 3. This act shall take effect July 1, 2016.

36
37 ===== T I T L E A M E N D M E N T =====

38 And the title is amended as follows:

39 Delete everything before the enacting clause
40 and insert:



155268

41 A bill to be entitled
42 An act relating to installation of tracking devices or
43 tracking applications; amending s. 934.425, F.S.;
44 revising an exception to a prohibition on the
45 installation of tracking devices or applications to
46 specify that the exception applies only to private
47 investigators under certain circumstances; deleting a
48 provision concerning persons engaged in private
49 investigation; reenacting s. 493.6118(1)(y), F.S.,
50 relating to grounds for disciplinary action, to
51 incorporate the amendment made to s. 934.425, F.S., in
52 a reference thereto; providing an effective date.



449336

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/24/2016	.	
	.	
	.	
	.	

The Committee on Rules (Lee) recommended the following:

Senate Amendment to Amendment (155268)

Delete line 35

and insert:

Section 3. This act shall take effect October 1, 2016.

By the Committee on Criminal Justice; and Senator Evers

591-01036-16

2016298c1

A bill to be entitled

An act relating to installation of tracking devices or tracking applications; amending s. 934.425, F.S.; revising exceptions to the prohibition on installation of tracking devices or tracking applications; authorizing the Florida Department of Corrections and the Florida Department of Juvenile Justice to lawfully install a tracking device or tracking application on another person's property as part of a criminal investigation; authorizing parents or legal guardians who are separated or divorced to install a tracking device or tracking application on their minor child's property if a separation or divorce decree authorizes such installation; specifying circumstances in which a private investigator is authorized to or prohibited from installing a tracking device or tracking application; reenacting s. 493.6118(1)(y), F.S., relating to grounds for disciplinary action, to incorporate the amendment made to s. 934.425, F.S., in a reference thereto; providing an effective date.

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

Section 1. Paragraphs (a), (b), and (d) of subsection (4) of section 934.425, Florida Statutes, are amended to read:

934.425 Installation of tracking devices or tracking applications; exceptions; penalties.—

(4) This section does not apply to:

(a) A law enforcement officer as defined in s. 943.10, or

Page 1 of 3

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

591-01036-16

2016298c1

any local, state, federal, or military law enforcement agency, the Florida Department of Corrections, or the Florida Department of Juvenile Justice that lawfully installs a tracking device or tracking application on another person's property as part of a criminal investigation.

(b) A parent or legal guardian of a minor child who installs a tracking device or tracking application on the minor child's property if:

1. The parents or legal guardians are lawfully married to each other and are not separated or otherwise living apart, and either parent or legal guardian consents to the installation of the tracking device or tracking application;

2. The parent or legal guardian is the sole surviving parent or legal guardian of the minor child;

3. The parent or legal guardian has sole custody of the minor child; or

4. The parents or legal guardians are divorced, separated, or otherwise living apart and both consent to the installation of the tracking device or tracking application, or if a separation or divorce decree authorizes such installation.

(d) A person acting in good faith on behalf of a business entity for a legitimate business purpose. This paragraph does not apply to:

1. A person engaged in private investigation, as defined in s. 493.6101, on behalf of another person, unless any of the following circumstances apply:

a. Such activities would otherwise be exempt under this subsection if performed by the person engaging the private investigator;—

Page 2 of 3

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

591-01036-16

2016298c1

59 b. The installation of a tracking device or tracking
60 application on another person's property is authorized by an
61 order issued by a court of this state;

62 c. The installation of a tracking device or tracking
63 application is for the purpose of locating a person known to be
64 a fugitive from justice; or

65 d. The installation of a tracking device or tracking
66 application is for the purpose of locating lost or stolen
67 property or locating assets that have been awarded by the court.

68 2. A private investigator who is working on behalf of a
69 client who is subject to a no contact order or an injunction for
70 protection, or a private investigator who knows or has reason to
71 know that a person seeking his or her investigative services is
72 involved in the commission of a crime or an unlawful act.

73 Section 2. For the purpose of incorporating the amendment
74 made by this act to section 934.425, Florida Statutes, in a
75 reference thereto, paragraph (y) of subsection (1) of section
76 493.6118, Florida Statutes, is reenacted to read:

77 493.6118 Grounds for disciplinary action.—

78 (1) The following constitute grounds for which disciplinary
79 action specified in subsection (2) may be taken by the
80 department against any licensee, agency, or applicant regulated
81 by this chapter, or any unlicensed person engaged in activities
82 regulated under this chapter.

83 (y) Installation of a tracking device or tracking
84 application in violation of s. 934.425.

85 Section 3. This act shall take effect July 1, 2016.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/24
Meeting Date

298
Bill Number (if applicable)

Topic Tracking Devices

Amendment Barcode (if applicable)

Name Cynthia Henderson

Job Title _____

Address 108 E. Jefferson St. Suite A

Phone 850

Street

Tallahassee

FL

32303

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing Fla Assoc of Licensed Investigators, FLACARS & FASCO

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



The Florida Senate

Committee Agenda Request

To: Senator Simmons
Chair, Rules Committee

Subject: Committee Agenda Request

December 3, 2015

Dear Senator Simmons,

I respectfully request that **Senate Bill 298**, regarding **Installation of Tracking Devices or Tracking Applications**, be placed on the:

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

C

A handwritten signature in cursive script that reads "Greg Evers".

Senator Greg Evers
Florida Senate, District 2

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: SM 600

INTRODUCER: Senator Thompson

SUBJECT: Recognition of Haitian Independence Day, Haitian Flag Day, and Haitian Heritage Month

DATE: February 23, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Aldana</u>	<u>McKay</u>	<u>CM</u>	<u>Favorable</u>
2.	<u>Aldana</u>	<u>Phelps</u>	<u>RC</u>	<u>Pre-meeting</u>

I. Summary:

SM 600 urges Congress to recognize January 1st as “Haitian Independence Day,” May 18th as “Haitian Flag Day,” and the month of May as “Haitian Heritage Month.”

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 formal petitions to the federal government that generally request the Congress to act on a particular subject.

II. Present Situation:

Haiti’s Independence

Haiti is one-third of the island of Hispaniola, with a current population of approximately 10 million people.¹ Haiti’s culture is heavily influenced by West Africa, from which slaves were imported in the 18th century by Spanish and French colonizers to support the island’s agrarian economy. In 1789, Haiti had a total population of 520,000 individuals, 452,000 of whom were slaves.² From 1791 to 1804,³ Haitian slaves and free people of color led “the largest and most successful slave rebellion in the Western Hemisphere,”⁴ which ultimately resulted in Haitian freedom from colonial rule. The pinnacle of the Haitian Revolution occurred on May 18, 1803, when Jean-Jacques Dessalines, who would become the first president of an independent Haiti,⁵

¹ U.S. Central Intelligence Agency, *Haiti’s Country Profile: People and Society*, available at: <https://www.cia.gov/library/publications/the-world-factbook/geos/ha.html> (last visited Feb. 15, 2016).

² Helen Chapin-Metz, Federal Research Division of the Library of Congress, *Dominican Republic and Haiti: Country Studies*, 266 (2001), available at <http://www.loc.gov/resource/frdcstdy.dominicanrepubli00metz/?st=gallery> (last visited Feb. 15, 2016).

³ Chapin-Metz, *supra* note 2 at 268.

⁴ Black Past, *Haitian Revolution (1791-1804)*, available at: <http://www.blackpast.org/gah/haitian-revolution-1791-1804> (last visited Feb. 15, 2016).

⁵ Chapin-Metz, *supra* note 2, at 272.

led a newly formed coalition under a blue and red flag to victories against the French.⁶ Dessalines' flag would serve as the basis for the modern flag of Haiti. In honor of the creation of its original flag, Haiti celebrates Haitian Flag Day on May 18th every year.⁷

Haiti ultimately declared its independence on January 1, 1804, and as a result, Haiti's Independence Day is celebrated on January 1 of every year.

Haitians in the United States

Due in part to Haiti's close proximity to the United States, there are approximately 1.5 million people of Haitian descent living in this country.⁸ Florida has the highest population of Haitian immigrants in the U.S., at 280,000—most of whom reside in the greater Miami area.⁹ Haitians tend to be newer immigrants, with arrivals from Haiti peaking from 2000 to 2009.¹⁰

In recognition of the impact of Haitian culture and individuals on the United States, several resolutions have been introduced in the United States House of Representatives to recognize May as "Haitian American Heritage Month." For example, House Resolution 777, sponsored by former Congressman Kendrick Meek, was introduced, but never heard, during the 109th Congress.¹¹ House Resolution 224, sponsored by Congresswoman Frederica Wilson, was introduced, but not heard, during the 113th Congress.¹²

Additionally, in 2005, President George Bush and Laura Bush posted a letter to congratulate Haitian-Americans on the heroic accomplishments of their ancestors.¹³ In 2010, President Obama recognized the importance of May's Haitian American Heritage Month by making a special presentation at the White House, lauding Haiti's contribution to the worlds of nations.¹⁴ On May 17, 2010, President Obama also welcomed the largest contingency of Haitian-American leaders at the White House for a Haitian Flag Day celebration.¹⁵

⁶ Biography.com, *Jean-Jacques Dessalines*, available at <http://www.biography.com/people/jean-jacques-dessalines-9273005> (last visited Feb. 15, 2016).

⁷ South Florida Times, *Caribbean Crossroads: May is Haitian Heritage Month* (May 21, 2010) available at <http://www.sfltimes.com/uncategorized/caribbean-crossroads-may-is-haitian-heritage-month> (last visited Feb. 15, 2016).

⁸ U.S. Census Bureau, *2013 & 2014 American Community Survey*.

⁹ Miami-Dade and Broward County combined have a total of 151,700 Haitian immigrants. Migration Policy Institution, U.S. *Immigrant Population by State and County*, (2009-2013) available at: <http://www.migrationpolicy.org/programs/data-hub/charts/us-immigrant-population-state-and-county?width=1000&height=850&iframe=true> (last visited Feb. 15, 2016).

¹⁰ Kristen McCabe, *Caribbean Immigrants in the United States*, (April 2011) available at: <http://www.migrationpolicy.org/article/caribbean-immigrants-united-states> (last visited Feb. 15, 2016).

¹¹ H.R. 777, 109th Congress (2006), available at: <https://www.congress.gov/bill/109th-congress/house-resolution/777?q=%7B%22search%22%3A%5B%22777%22%5D%7D&resultIndex=42> (last visited Feb. 15, 2016).

¹² H.R. 224, 113th Congress (2013), available at: <https://www.congress.gov/bill/113th-congress/house-resolution/224> (last visited Feb. 15, 2016).

¹³ South Florida Times, *supra* note 7.

¹⁴ *Id.*

¹⁵ Black Past, *supra* note 4.

Miami-Dade County passed a resolution designating May as “Haitian Cultural Heritage Month,” and has held annual celebrations since.¹⁶ Similarly, the Palm Beach County School District adopted a resolution recognizing May as Haitian Heritage Month.¹⁷

Recognition of Cultural Heritage in the United States

Congress has passed legislation relating to national observances and commemorative months on several occasions. For example, as a result of Congressional action, February is recognized as National African American History Month, November as “American Indian Heritage Month,” May as “Jewish American Heritage Month,” May as “Asian Pacific Heritage Month,” and September 15th through October 15th as “National Hispanic Heritage Month.”¹⁸

III. Effect of Proposed Changes:

SM 600 urges the U.S. Congress to recognize January 1 of each year as “Haitian Independence Day,” May 18th of each year as “Haitian Flag Day,” and the month of May of each year as “Haitian Heritage Month.”

Copies of the memorial are 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 of the United States Congress.

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 federal government to act on a particular subject.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁶ Miami Dade County, Resolution Reallocating \$35,000 to the Haitian American Foundation for Support of Haitian Cultural Heritage Month- May 2001, available at:

<http://www.miamidade.gov/govaction/matter.asp?matter=011622&file=false&yearFolder=Y2001> (last visited Feb. 15, 2016); see also Miami-Dade County, *Haitian Cultural Heritage Month kicks off on May 1*, (Apr. 24, 2015) available at: <http://www.miamidade.gov/district02/releases/2015-04-24-haitian-month.asp> (last visited Feb. 15, 2016).

¹⁷ See, School District of Palm Beach County, Office of Communications, *Palm Beach County to Celebrate Haitian Heritage During the Month of May*, April 11, 2011, available at: <https://news.palmbeachschools.org/pao/2011/04/11/palm-beach-county-to-celebrate-haitian-heritage-during-the-month-of-may/> (last visited Feb. 15, 2016).

¹⁸ See Library of Congress, Commemorative Observances, available at: <http://www.loc.gov/law/help/commemorative-observations/index.php> (last visited Feb. 15, 2016).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

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.

By Senator Thompson

12-00754-16

2016600__

Senate Memorial

A memorial to the Congress of the United States, urging Congress to annually recognize January 1 as "Haitian Independence Day," May 18 as "Haitian Flag Day," and the month of May as "Haitian Heritage Month."

WHEREAS, the Republic of Haiti, an island nation located in the West Indies on the western third of the Island of Hispaniola, declared its independence from French colonial rule on January 1, 1804, following a slave revolt under the leadership of Generals Toussaint L'Ouverture, Jean-Jacques Dessalines, and Alexandre Pétion, becoming the first and only state created from a successful slave rebellion, and

WHEREAS, Haiti was the first independent nation in Latin America and the first post-colonial independent nation led by blacks in the world, and

WHEREAS, Haitian Independence Day is globally acknowledged and annually celebrated on January 1 as an affirmation of equality, freedom, and the abolition of slavery, and

WHEREAS, the Haitian flag known today, a variant of which first came into use in 1806, is emblazoned with the country's coat of arms and the colors red and blue, adopted from the flag of France, the country from which Haiti gained its independence, and

WHEREAS, General Jean-Jacques Dessalines is regarded as the father of the Haitian flag, known to have dramatically cut the French tricolor with his saber at the May 1803 Arcahaie conference, ripping away the white of the French flag to

Page 1 of 4

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

12-00754-16

2016600__

symbolize an end to European influence and leaving two strips that Catherine Flon then sewed back together: the blue, which represented the former African slaves brought to Haiti by colonial powers, and the red, which symbolized a people of mixed ancestry, and

WHEREAS, the Haitian flag is a definitive symbol of pride for the Caribbean nation, having become the second republic, after the United States, to defeat a European colonial power in the Americas, and

WHEREAS, Haitian Flag Day events are annually observed and celebrated with pride and enthusiasm throughout the United States, and

WHEREAS, Haitian Heritage Month is a jubilant celebration in the United States, embracing Haitian heritage and culture, and

WHEREAS, first celebrated in Boston, Massachusetts, in 1998, Haitian Heritage Month is observed nationwide in the month of May from Florida to New York with parades, festivals, and school activities, and

WHEREAS, the importance of Haitian Heritage Month is exemplified by South Florida Congressman Kendrick B. Meek's introduction of a bill in the United States House of Representatives in 2004 and 2006 to recognize the month of May as Haitian Heritage Month, by former President George W. Bush and First Lady Laura Bush's letter, sent in May 2005, to congratulate the Haitian-American community on the occasion of the heritage month, and by the organization of a celebration at the White House that same year, and

WHEREAS, as educators, authors, community leaders,

Page 2 of 4

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12-00754-16

2016600__

59 activists, athletes, artists, musicians, and politicians,
 60 Haitians and Haitian Americans have left an indelible mark on
 61 every facet of this nation's society and the world, evidenced by
 62 the accomplishments of such icons as Jean Baptiste Point du
 63 Sable, founder of the City of Chicago; civil rights activist
 64 W.E.B. Du Bois; National Football League player Pierre Garçon;
 65 author and candidate for the Nobel Prize for Literature in 2009,
 66 Frankétienne; and Tony Award-winning actress and singer Nikki M.
 67 James, and

68 WHEREAS, the close proximity of Haitian and American
 69 shores, in conjunction with our countries' common bond of mutual
 70 values and commitment to democracy, ensures lasting comity of
 71 nations and continued trade and diplomatic relations, and

72 WHEREAS, with an estimated 1.5 million persons of Haitian
 73 descent now residing in the United States, it is important to
 74 acknowledge the positive impact of Haitian Americans in their
 75 contribution to the betterment and diversity of this country,
 76 and

77 WHEREAS, the United States and Haiti share a history of
 78 freedom, a common belief in human rights, and diverse, complex,
 79 and resilient peoples who have impacted the world through
 80 vibrant cultures, democracy, and a wealth of talent and
 81 achievement, and

82 WHEREAS, Haitian Independence Day, Haitian Flag Day, and
 83 Haitian Heritage Month are each observed to salute the Haitian
 84 and Haitian-American communities and to exhibit appreciation for
 85 their culture and heritage, which have immeasurably enriched the
 86 lives of the people of this nation, NOW, THEREFORE,
 87

Page 3 of 4

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12-00754-16

2016600__

88 Be It Resolved by the Legislature of the State of Florida:

89
 90 That the Congress of the United States is urged to
 91 recognize January 1 of each year as "Haitian Independence Day,"
 92 May 18 of each year as "Haitian Flag Day," and the month of May
 93 of each year as "Haitian Heritage Month" and to encourage the
 94 people of the United States to observe these occasions with
 95 appropriate ceremonies, celebrations, and activities.

96 BE IT FURTHER RESOLVED that copies of this memorial be
 97 dispatched to the President of the United States, to the
 98 President of the United States Senate, to the Speaker of the
 99 House of Representatives, and to each member of the Florida
 100 delegation to the United States Congress.

Page 4 of 4

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Commerce and Tourism, *Vice Chair*
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Community Affairs
Ethics and Elections
Transportation

JOINT COMMITTEE:

Joint Administrative Procedures Committee

SENATOR GERALDINE F. THOMPSON

12th District

February 24, 2016

To Whom It May Concern:

Due to a conflict my Legislative Assistant Travaris McCurdy will present on my behalf SM 600 Recognition of Haitian Independence Day, Haitian Flag Day, and Haitian Heritage Month, in the Committee on Rules on 2/24/16.

Sincerely,

A handwritten signature in cursive script that reads "Geraldine F. Thompson".

Senator Geraldine F. Thompson
District 12

REPLY TO:

- 511 W. South Street, Suite 204, Orlando, Florida 32805 (407) 245-1511 FAX: (407) 245-1513
- 210 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5012

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



The Florida Senate

Committee Agenda Request


To: Senator David Simmons, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 18, 2016

I respectfully request that **Senate Bill # 600**, relating to Recognition of Haitian Independence Day, Haitian Flag Day, and Haitian Heritage Month, be placed on the:

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


Senator Geraldine F. Thompson
Florida Senate, District 12

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 612

INTRODUCER: Senator Hays

SUBJECT: Slungshot

DATE: February 23, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Askey</u>	<u>McKay</u>	<u>CM</u>	Favorable
3.	<u>Cellon</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 612 repeals references to “slungshot” in ch. 790, F.S. By making these changes, the bill:

- Allows persons to carry a slungshot in a concealed manner;
- Allows slungshots to be manufactured, displayed for sale, and sold; and
- Allows a dealer in arms to sell or transfer a slungshot to a minor.

“Slungshot” is defined in s. 790.001(12), F.S., as a small mass of metal, stone, sand, or similar material fixed on a flexible handle, strap, or the like, used as a weapon.

II. Present Situation:

“Slungshot” is defined in s. 790.001(12), F.S., as a small mass of metal, stone, sand, or similar material fixed on a flexible handle, strap, or the like, used as a weapon. The term “slungshot” is contained within the definition of what can be considered a concealed weapon under current law.¹ It is a second degree misdemeanor to manufacture a slungshot or cause one to be manufactured, or to sell a slungshot or expose one for sale.² It is a second degree felony for any dealer in arms to sell or transfer a slungshot to a minor.³

The slungshot often consists of a weight affixed to the end of a long cord by being wound into the center of a knot called a monkey’s fist.⁴ Although the slungshot is a maritime tool, it became an improvised and very effective weapon, widely used by street gangs in the 19th century.⁵ Survivalists have embraced the slungshot as both a tool and a weapon.

¹ Section 790.001(3)(a), F.S.

² Section 790.09, F.S.

³ Section 790.18, F.S.

⁴ See generally, Wikipedia slungshot website. Available at: <https://en.wikipedia.org/wiki/Slungshot>, (last visited February 11, 2016).

⁵ *Id.*; see also <http://www.wisegeek.com/what-is-a-slungshot.htm>, (last visited February 11, 2016).

III. Effect of Proposed Changes:

The bill repeals references to “slungshot” in ch. 790, F.S. The slungshot may be manufactured, displayed for sale, sold, and carried in a concealed manner under the provisions of the bill. The bill will also allow a dealer in arms to sell or transfer a slungshot to a minor.

The bill makes conforming changes in s. 790.09, F.S., to reflect that the section applies only to metallic knuckles.

The bill is effective upon becoming a law.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

Indeterminate, but positive.

C. Government Sector Impact:

The Department of Agriculture and Consumer Services reports that the bill has no impact on the department.⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁶ Department of Agriculture and Consumer Services, *Senate Bill #612: Relating to Slungshot*, October 26, 2015, (on file with the Committee on Commerce and Tourism).

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 790.001, 790.09, and 790.18.

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.

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

By Senator Hays

11-00078-16

2016612__

1 A bill to be entitled
 2 An act relating to the slungshot; amending s. 790.001,
 3 F.S.; revising the definition of the term "concealed
 4 weapon" to delete its inclusion of a slungshot;
 5 amending s. 790.09, F.S.; deleting provisions
 6 prohibiting the manufacture or sale of any instrument
 7 or weapon usually known as a slungshot; amending s.
 8 790.18, F.S.; deleting a provision prohibiting a
 9 dealer in arms from selling or transferring a
 10 slungshot to a minor; providing an effective date.

11 Be It Enacted by the Legislature of the State of Florida:
 12
 13

14 Section 1. Paragraph (a) of subsection (3) of section
 15 790.001, Florida Statutes, is amended to read:

16 790.001 Definitions.—As used in this chapter, except where
 17 the context otherwise requires:

18 (3) (a) "Concealed weapon" means any dirk, metallic
 19 knuckles, ~~slungshot~~, billie, tear gas gun, chemical weapon or
 20 device, or other deadly weapon carried on or about a person in
 21 such a manner as to conceal the weapon from the ordinary sight
 22 of another person.

23 Section 2. Section 790.09, Florida Statutes, is amended to
 24 read:

25 790.09 Manufacturing or selling metallic knuckles
 26 ~~slungshot~~.—Whoever manufactures or causes to be manufactured, or
 27 sells or exposes for sale any instrument or weapon of the kind
 28 usually known as ~~slungshot~~, or metallic knuckles commits, ~~shall~~
 29 ~~be guilty of~~ a misdemeanor of the second degree, punishable as

Page 1 of 2

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11-00078-16

2016612__

30 provided in s. 775.082 or s. 775.083.

31 Section 3. Section 790.18, Florida Statutes, is amended to
 32 read:

33 790.18 Sale or transfer of arms to minors by dealers.—It is
 34 unlawful for any dealer in arms to sell or transfer to a minor
 35 any firearm, pistol, Springfield rifle or other repeating rifle,
 36 bowie knife or dirk knife, brass knuckles, ~~slungshot~~, or
 37 electric weapon or device. A person who violates this section
 38 commits a felony of the second degree, punishable as provided in
 39 s. 775.082, s. 775.083, or s. 775.084.

40 Section 4. This act shall take effect upon becoming a law.

Page 2 of 2

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/24/2016

Meeting Date

Topic _____

Bill Number 612
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

✓

COMMITTEES:
Appropriations Subcommittee on General Government, *Chair*
Governmental Oversight and Accountability, *Vice Chair*
Appropriations /
Environmental Preservation and Conservation
Ethics and Elections
Fiscal Policy

SENATOR ALAN HAYS
11th District

JOINT COMMITTEE:
Joint Select Committee on Collective Bargaining, *Alternating Chair*

MEMORANDUM

To: Senator David Simmons, Chair
Committee on Rules
CC: John B. Phelps, Staff Director
Cissy DuBose, Committee Administrative Assistant

From: Senator D. Alan Hays

Subject: Request to agenda SB 612- Slungshot

Date: February 16, 2016

The above referenced bill passed through Committee on Commerce and Tourism this morning. In the interest of keeping the bill moving forward, I am asking that you please consider adding it to your next agenda "if received." If you have any questions regarding this legislation, I welcome the opportunity to meet with you one-on-one to discuss it in further detail. Thank you so much for your consideration of this request.

Sincerely,

A handwritten signature in cursive that reads "D. Alan Hays, DMD".

D. Alan Hays, DMD
State Senator, District 11

REPLY TO:

- 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
- 320 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011
- 1104 Main Street, The Villages, Florida 32159 (352) 360-6739 FAX: (352) 360-6748
- 685 West Montrose Street, Suite 210, Clermont, Florida 34711 (352) 241-9344 FAX: (888) 263-3677

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 776

INTRODUCER: Governmental Oversight and Accountability Committee, Communications, Energy, and Public Utilities Committee and Senator Bradley

SUBJECT: Public Records/Utility Information or Industrial Control Technology Systems Security

DATE: February 23, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sorchych-Hoffman/ Wiehle	Caldwell	CU	Fav/CS
2.	Kim	McVaney	GO	Fav/CS
3.	Sorchych-Hoffman/ Wiehle	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 776 exempts from public access and inspection requirements certain information relating to the information technology security of a utility owned or operated by a unit of local government, which, if disclosed, could result in the identification of vulnerabilities that could result in a security breach.

The bill contains a statement of public necessity as required by the Florida Constitution. The public necessity statement provides that information technology security should exempt from public disclosure in order to prevent security breaches and threats to utilities.

This is a new public records exemption, so a two-thirds vote by each chamber will be necessary for passage.

The bill will become effective upon becoming law.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to access any record made or received in relation to the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The records of all three branches of state government are specifically included.²

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

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption⁷ and must be no broader than necessary to accomplish the stated purpose of the law.⁸ A bill enacting an exemption may not contain other substantive provisions⁹ 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 (“OGSR 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 an exemption on October 2nd of the fifth year after creation or

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

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

⁵ Section 119.07(1)(a), F.S.

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

⁷ FLA. CONST., art. I, s. 24(c).

⁸ *Id.*

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.

substantial amendment, unless the Legislature reenacts the exemption.¹² The OGSR 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

Present Security-Related Public Records Exemptions

Section 119.071(3), F.S., provides the existing public records exemptions for security-related information. The following are ‘confidential and exempt’ or ‘exempt’ from public disclosure:

- A security system plan¹⁴ or portion thereof for property owned by or leased to the state or any of its political subdivisions, as well as the security system plans of privately owned or leased property;
- Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency; and
- Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout or structural elements of an attractions and recreation facility, entertainment or resort complex, industrial complex, retail and service development, office development, or hotel or motel development.

Security systems are also exempt from public disclosure under s. 281.301, F.S. This exemption provides that information relating to the security systems for any property owned by or leased to the state or any of its political subdivisions, and information relating to the security systems for any privately owned or leased property which is in the possession of any agency is confidential and exempt from public disclosure. This security system exemption includes all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to or revealing such systems or information. Section 281.301, F.S., also provides an exemption for public meetings which include discussions about security systems.

Security information that is a trade secret are exempt from public disclosure requirements under s. 815.045, F.S.¹⁵ There is also a public records exemption for data, programs or supporting

¹² Section 119.15(3), F.S.

¹³ Section 119.15(6)(b), F.S.

¹⁴ The section defines the term “security system plan” to include all:

- Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems;
- Threat assessments conducted by any agency or any private entity;
- Threat response plans;
- Emergency evacuation plans;
- Sheltering arrangements; or
- Manuals for security personnel, emergency equipment, or security training.

¹⁵ Section 815.045, F.S. states:

Trade secret information.—The Legislature finds that it is a public necessity that trade secret information as defined in s. 812.081, and as provided for in s. 815.04(3), be expressly made confidential and exempt from the public records law because it is a felony to disclose such records. Due to the legal uncertainty as to whether a public employee would be protected from a felony conviction if otherwise complying with chapter 119, and with s. 24(a), Art. I of the State Constitution, it is imperative

documentation that is trade secret which resides on a computer, computer system or network, as well as any electronic device. This exemption provides that such trade secrets are confidential and exempt, pursuant to s. 815.04(3)(a), F.S.

Applicability of Public Records Requirements to Utilities

The public records laws apply to any 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. For the public records law to apply directly to a utility, the utility would have to be a governmental entity, a municipality. However, the public records laws could apply indirectly to the records of a nongovernmental if that utility were required to file the records with a governmental agency, so that the records would become records received in connection with the agency's official business. For example, the Public Service Commission (PSC) regulates some utilities that are not governmental entities and are not directly subject to the public records laws, but that have to make numerous filings with the PSC, which then become subject to public records laws.

In order to protect confidential information in these records, the PSC statutes include a public records exemption. Section 366.093, F.S., provides that proprietary confidential business information held by the PSC is confidential and therefore exempt from public disclosure. Section 366.093(3), F.S., defines the term "proprietary confidential business information," in part, to mean:

information, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public.

Proprietary confidential business information includes "security measures, systems, or procedures"¹⁶ and could be interpreted to include the type of information covered by the bill.

that a public records exemption be created. The Legislature in making disclosure of trade secrets a crime has clearly established the importance attached to trade secret protection. Disclosing trade secrets in an agency's possession would negatively impact the business interests of those providing an agency such trade secrets by damaging them in the marketplace, and those entities and individuals disclosing such trade secrets would hesitate to cooperate with that agency, which would impair the effective and efficient administration of governmental functions. Thus, the public and private harm in disclosing trade secrets significantly outweighs any public benefit derived from disclosure, and the public's ability to scrutinize and monitor agency action is not diminished by nondisclosure of trade secrets.

¹⁶ Section 366.093(3)(c), F.S.

III. Effect of Proposed Changes:

The bill creates a definition of the term “utility” for purposes of the public records statutes, defining the term to mean a person or entity that provides electricity, natural gas, telecommunications, water, chilled water, reuse water, or wastewater.

The bill exempts from public records law information which is held by a utility owned or operated by a unit of local government and is:

- Information related to the security of the technology, processes, or practices of a utility owned or operated by a unit of local government which are designed to protect the utility’s networks, computers, programs, and data from attack, damage, or unauthorized access, which information, if disclosed, would facilitate the alteration, disclosure, or destruction of such data or information technology resources.
- Information, whether in physical or virtual form, related to the security of existing or proposed information technology systems or industrial control technology systems of a utility owned or operated by a unit of local government, which, if disclosed, would facilitate unauthorized access to, and alteration or destruction of, such systems in a manner that would adversely impact the safe and reliable operation of the systems and the utility.

The exemption applies to these categories of information whether held before, on, or after the effective date of the exemption.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill also includes a public necessity statement making legislative findings. The public necessity statement provides that, as utilities becomes more connected and integrated through information and communications technology, the exposure to damage from attacks through such technology increases. Disclosure of security measures could result in the identification of vulnerabilities that allow a security breach that damages utility systems and disrupts the safe and reliable operation of such systems, adversely impacting the public health and safety and the economic well-being of the state, as well as impact national security. The public necessity statement also provides that the public and private harm in disclosing the information technology security information outweighs any public benefit derived from disclosure of such information.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

To the extent this bill requires a city or county to expend funds to comply with its terms, the provisions of Article VII, section 18(a) of the Florida Constitution, may apply. However, Article VII, section 18(d) of the Florida Constitution exempts bills having an insignificant fiscal impact on cities and counties from the mandates provisions.

This bill makes certain information submitted to cities and counties confidential and exempt from public disclosure. As a result, cities and counties holding such information may incur costs associated with redacting such information before providing related documents to the public. However, the costs incurred by the cities and counties are anticipated to be insignificant.

B. Public Records/Open Meetings Issues:

The bill contains a statement of public necessity justifying the need for the public records exemption as required by Article I, s. 24(c), of the Florida Constitution. The exemption appears to be no broader than necessary to accomplish the purpose outlined in the public necessity statement.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminable.

C. Government Sector Impact:

Government entities will have to train their staff to redact relevant information relating to the information technology security of utility agencies from public disclosure if there is a public records request.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Proponents of the bill indicated that the types of information sought to be protected include:

- Information technology security reports, diagrams, PowerPoints, flowcharts, and correspondence that detail the security strategy, protective measures, and implementation plans and results, whether created by the utility or by a third party tasked with reviewing and stress-testing systems and procedures.
- Information technology software lists that detail the software used to defend security networks, provide card access to restricted areas, and provide remote access to critical systems.
- Critical Infrastructure Protection (CIP) Reports sent to the Florida Regional Coordinating Council (FRCC).

- CIP Audits, responses, recommendations, and action plans sent to FRCC.
- Correspondence related to the CIP plans with FRCC.
- Physical and virtual security plans, reports, diagrams, PowerPoints, flowcharts, and correspondence relating to defending the information technology infrastructure and other infrastructure (i.e., power plants, water plants, substations, power dispatching centers, grid operations centers, network operations centers, and data centers).¹⁷

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 119.011 and 119.0713.

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 February 16, 2016:

The committee substitute does the following:

- Changes the retroactivity clause to include information “held by” utilities, which is more inclusive than “obtained by” a utility. This change will make the retroactivity clause applicable to information that a utility has in its possession or generates prior to enactment of the bill.
- Restructures the public necessity statement.

CS by Communications, Energy, and Public Utilities on February 6, 2016:

The committee substitute:

- Deletes the exemption for security firm identity information;
- Deletes the undefined term “utility agency” and provides a definition of the term “utility”; and
- Makes edits throughout the bill for purposes of clarity.

- B. **Amendments:**

None.

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

¹⁷ Security plans for physical infrastructure will be exempt from public disclosure pursuant to ss. 281.301 and 119.071(3), F.S.

By the Committees on Governmental Oversight and Accountability;
and Communications, Energy, and Public Utilities; and Senator
Bradley

585-03648-16

2016776c2

A bill to be entitled

An act relating to public records; amending s.

119.011, F.S.; defining the term "utility"; amending

s. 119.0713, F.S.; providing an exemption from public

records requirements for information related to the

security of information technology systems or

industrial control technology systems of a utility

owned or operated by a unit of local government;

providing for retroactive application; providing for

future legislative review and repeal of the exemption;

providing a statement of public necessity; providing

an effective date.

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

Section 1. Subsection (15) is added to section 119.011,
Florida Statutes, to read:

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

(15) "Utility" means a person or entity that provides
electricity, natural gas, telecommunications, water, chilled
water, reuse water, or wastewater.

Section 2. Subsection (5) is added to section 119.0713,
Florida Statutes, to read:

119.0713 Local government agency exemptions from inspection
or copying of public records.—

(5) (a) The following information held by a utility owned or
operated by a unit of local government is exempt from s.
119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Information related to the security of the technology,
processes, or practices of a utility owned or operated by a unit

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

585-03648-16

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of local government that are designed to protect the utility's
networks, computers, programs, and data from attack, damage, or
unauthorized access, which information, if disclosed, would
facilitate the alteration, disclosure, or destruction of such
data or information technology resources.

2. Information related to the security of existing or
proposed information technology systems or industrial control
technology systems of a utility owned or operated by a unit of
local government, which, if disclosed, would facilitate
unauthorized access to, and alteration or destruction of, such
systems in a manner that would adversely impact the safe and
reliable operation of the systems and the utility.

(b) This exemption applies to such information held by a
utility owned or operated by a unit of local government before,
on, or after the effective date of this exemption.

(c) This subsection is subject to the Open Government
Sunset Review Act in accordance with s. 119.15 and shall stand
repealed on October 2, 2021, unless reviewed and saved from
repeal through reenactment by the Legislature.

Section 3. (1) The Legislature finds that it is a public
necessity that the following information held by a utility owned
or operated by a unit of local government be exempt from s.
119.07(1), Florida Statutes, and s. 24(a), Article I of the
State Constitution:

(a) Information related to the security of the technology,
processes, or practices of a utility owned or operated by a unit
of local government that are designed to protect the utility's
networks, computers, programs, and data from attack, damage, or
unauthorized access, which information, if disclosed, would

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60 facilitate the alteration, disclosure, or destruction of such
 61 data or information technology resources.

62 (b) Information related to the security of existing or
 63 proposed information technology systems or industrial control
 64 technology systems of a utility owned or operated by a unit of
 65 local government, which, if disclosed, would facilitate
 66 unauthorized access to, and alteration or destruction of, such
 67 systems in a manner that would adversely impact the safe and
 68 reliable operation of the systems and the utility.

69 (2) The Legislature finds that, as utility system
 70 infrastructure becomes more connected and integrated through
 71 information and communications technology, the exposure to
 72 damage from attacks through such technology continues to grow.
 73 These attacks may result in the disruption of utility services
 74 and damage to utility systems. Maintaining safe and reliable
 75 utility systems is vital to protecting the public health and
 76 safety and ensuring the economic well-being of the state.
 77 Accordingly, many utilities have adopted technologies,
 78 processes, and practices designed to secure data, information
 79 technology systems, and industrial control technology systems.
 80 Disclosure of sensitive information related to these security
 81 measures could result in the identification of vulnerabilities
 82 that allow a security breach that damages utility systems and
 83 disrupts the safe and reliable operation of such systems,
 84 adversely impacting the public health and safety and the
 85 economic well-being of the state. Because of the interconnected
 86 nature of utility systems, a security breach may also impact
 87 national security concerns. As a result, the Legislature finds
 88 that the public and private harm in disclosing the information

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89 made exempt by this act outweighs any public benefit derived
 90 from disclosure of such information. The protection of
 91 information made exempt by this act will ensure that utilities
 92 have greater safeguards to protect against security threats and
 93 will bolster efforts to develop more resilient information
 94 technology systems and industrial control technology systems.
 95 For these reasons, the Legislature finds that is a public
 96 necessity to make such information exempt from public records
 97 requirements, and to provide for retroactive application of the
 98 public records exemption.

99 Section 4. This act shall take effect upon becoming a law.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

02/24/2016

Meeting Date

SB 776

Bill Number (if applicable)

Topic Public Records for Municipal Utilities

Amendment Barcode (if applicable)

Name Joseph R. Salzvergs ("SAUL'S VERG")

Job Title

Address 301 S. Bronough Street, Suite 500

Phone (850) 577-1403

Street

Tallahassee

FL

32301

City

State

Zip

Email

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

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

Representing Florida Municipal Electric Authority

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

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

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

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

Rules

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/24/16
Meeting Date

SB 776
Bill Number (if applicable)

Topic Public Records / Utility Agencies IT Security

Amendment Barcode (if applicable)

Name Suzanne Cross

Job Title _____

Address 21 W. Church St.
Street

Phone 904 665-8331

Jacksonville FL 32202
City State Zip

Email gossSE@jea.com

Speaking: For Against Information

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

Representing JEA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-24-16

Meeting Date

776

Bill Number (if applicable)

Topic PUBLIC RECORDS / UTILITY INFORMATION SYSTEMS SECURITY Amendment Barcode (if applicable)

Name KEVIN NOONAN

Job Title

Address 100 W. ANDERSON ST.

Street

Phone 407. 466. 1287

ORLANDO FL 32801

City

State

Zip

Email KNOONAN@OUC.COM

Speaking: [] For [] Against [] Information

Waive Speaking: [X] In Support [] Against

(The Chair will read this information into the record.)

Representing ORLANDO UTILITIES COMMISSION

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

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

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/24/2016

Meeting Date

Topic _____

Bill Number 776
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)



The Florida Senate

Committee Agenda Request

To: Senator David Simmons, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 17, 2016

I respectfully request that **Senate Bill # CS/CS/SB 776**, relating to Public Records/Utility Information, be placed on the:

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

Senator Rob Bradley
Florida Senate, District 7

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 960

INTRODUCER: Transportation Committee and Senator Bradley

SUBJECT: Protection of Motor Vehicle Dealers' Consumer Data

DATE: February 23, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Jones</u>	<u>Eichin</u>	<u>TR</u>	Fav/CS
2.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	Favorable
3.	<u>Jones</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 960 requires motor vehicle manufacturers, distributors, or importers (collectively referred to as "licensees"), and third parties acting on behalf of a licensee, to comply with certain use restrictions for consumer data that is provided to them by a motor vehicle dealer (dealer).

Specifically, the bill:

- Requires licensees to comply with, and not knowingly cause a dealer to violate, all laws governing the reuse or disclosure of consumer data, and to provide a written statement that specifies the licensee's methods used to safeguard consumer data;
- Makes licensees responsible for provision, upon a dealers request, of a written list of consumer data obtained by a licensee from the dealer, and a written list of all persons to whom the consumer data has been provided to during the previous 6 months, with specific exemptions;
- Prohibits licensees from requiring a dealer to grant the licensee, or a third party acting on behalf of the licensee, direct access to the dealer's data management system in order for the licensee to collect consumer data;
- Provides for methods by which a licensee may be granted permission by a dealer to directly access the dealer's consumer data; and
- Requires the licensee to indemnify the dealer for any third-party claims asserted against or damages incurred by the dealer as a result of the licensee's or third party's access, use, or disclosure of the consumer data.

The bill also provides that any person who institutes a cause of action against a licensee for a violation of the prohibitions or requirements established in the bill, has the burden of proving that the violation was willful or with sufficient frequency to establish a pattern of wrongdoing.

The bill takes effect upon becoming law.

II. Present Situation:

Florida has substantially regulated motor vehicle manufacturers and motor vehicle dealers since before 1950.¹ Initially, the Florida Legislature approached the issue by implementing only consumer protections aimed at preventing consumer abuse by dealers.² In 1970, the Legislature passed more comprehensive legislation, embodied in ch. 320, F.S.,³ which regulates the contractual relationship between manufacturers and dealers,⁴ requires the licensing of manufacturers, and regulates numerous aspects of the contracts between manufacturers and dealers.

Florida Automobile Dealers Act

A manufacturer, factory branch, distributor, or importer (licensee) must be licensed under s. 320.61(1), F.S., to engage in business in Florida. Sections 320.60-320.70, F.S., the “Florida Automobile Dealers Act”⁵ (act), primarily regulate the contractual business relationship between dealers and licensees, and provide for the licensure of manufacturers, factory branches, distributors, or importers. The act specifies, in part:

- The conditions and situations under which the Department of Highway Safety and Motor Vehicles (DHSMV) may deny, suspend, or revoke a regulated license;
- The process, timing, and notice requirements for licensees who wish to discontinue, cancel, modify, or otherwise replace a franchise agreement with a dealer, and the conditions under which the DHSMV may deny such a request;
- The procedures a licensee must follow to add a dealership in an area already served by a franchised dealer, the protest process, and the DHSMV’s role in these circumstances;
- The damages that can be assessed against a licensee who is in violation of Florida Statutes; and
- The DHSMV’s authority to adopt rules to implement these sections of law.

Applicability

Section 320.6992, F.S., provides that the act shall apply to all presently existing or future systems of distribution of motor vehicles in Florida, except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution. Generally, all agreements that are renewed, amended, or entered into subsequent to

¹ Chapter 9157, L.O.F. (1923); Chapter 20236, L.O.F. (1941).

² Walter E. Forehand and John W. Forehand, *Motor Vehicle Dealer and Motor Vehicle Manufacturers: Florida Reacts to Pressures in the Marketplace*, 29 Fla. St. Univ. Law Rev. 1058, 1064 (2002), <http://law-wss-01.law.fsu.edu/journals/lawreview/downloads/293/Forehand.pdf> (last visited Jan. 29, 2016).

³ See ch. 70-424, L.O.F.

⁴ See s. 320.60(11), F.S.

⁵ Walter E. Forehand, *supra* note 2, at 1065.

October 1, 1988, are governed by the act, including amendments to the act, unless specifically providing otherwise.

In 2009, the DHSMV held in an administrative proceeding that amendments to the act do not apply to dealers whose franchise agreements were signed prior to the effective date of various amendments to the act.⁶ The DHSMV has indicated that it will apply the *Motorsports* holding to every amendment to the act. This may result in different protections accruing to dealers, depending on when they signed their franchise agreements.

Civil Damages

Section 320.697, F.S., provides that any person who suffers pecuniary loss or is otherwise affected by a licensee's violation of the act has a cause of action against the licensee for damages and may recover damages and attorney's fees, notwithstanding any other remedies under the act. The licensee has the burden to prove that such violation did not occur upon a prima facie showing by the person bringing the action.

Consumer Data Protection

Consumer data can refer to a variety of information, including, but not limited to:

- Personal-identifying data: name, address, telephone number, or email address;
- Demographic data: age, race, occupation, income, or education;
- Retail data: purchase history, credit card numbers, or bank account information; and
- Government data: social security or driver license numbers.

In the United States there is no all-encompassing law regulating the acquisition, storage, or use of consumer data in general terms. However, partial regulations do exist in state and federal law, including in the Federal Trade Commission (FTC) Privacy and Safeguards Rule, the Gramm-Leach-Bliley Act, and state law.

Gramm-Leach Bliley Act (GLBA)⁷

The GLBA, also known as the Financial Services Modernization Act of 1999, implemented law regarding the protection and disclosure of nonpublic personal information obtained by financial institutions, limitations on reuse of information, and privacy notice requirements. The GLBA gives the Federal Trade Commission (FTC) authority to prescribe rules necessary to carry out certain purposes of the GLBA.⁸

⁶ See *Motorsports of Delray, LLC v. Yamaha Motor Corp., U.S.A.*, Case No. 09-0935 (Fla. DOAH Dec. 9, 2009). The DHSMV ruled that a 2006 amendment to the Florida Automobile Dealers Act does not apply to a dealer terminated in 2008 because the dealer's franchise agreement was entered into prior to the effective date of the amendment. This Final Order was initially appealed but was later voluntarily dismissed. See also, *In re Am. Suzuki Motor Corp.*, 494 B.R. 466, 480 (Bankr. C.D. Cal. 2013).

⁷ 15 U.S.C. ss. 6801 *et. seq.*

⁸ 15 U.S.C. s. 6804

The FTC is the chief federal agency on privacy policy and enforcement.⁹ The FTC's Privacy Rule (Privacy Rule)¹⁰ is a principle part of the GLBA, and applies to vehicle dealers who extend credit to someone, arrange for someone to finance or lease a car, or provide financial advice or counseling to individuals.¹¹ Personal information collected by a dealer to provide these services is covered under the Privacy Rule, which outlines when privacy notices must be given to consumers, what information must be included in the privacy notices, limitations on the disclosure and reuse of non-public personal information, and opt-out requirements.¹²

The FTC's Safeguards Rule, also part of the GLBA, outlines standards for safeguarding customer information.¹³ The rule requires service providers who, through their services to a financial institution, handle or are permitted access to customer information to have a written security plan to protect the confidentiality and integrity of customer data.¹⁴

Florida Information Protection Act of 2014¹⁵

The Florida Information Protection Act of 2014 provides the procedure for protection and security of confidential personal information¹⁶ that is in the possession of covered entities.¹⁷ Covered entities, governmental entities, and third-party agents are required to take reasonable measures to protect and secure electronic data containing personal information. When the security of a data system is breached, a covered entity must provide notice to the Department of Legal Affairs and affected individuals, unless an investigation and consultation with relevant law enforcement agencies determines the breach has not and will not likely result in identity theft or financial harm to the individuals whose personal information has been accessed.¹⁸ If a covered entity fails to provide the required notices, it may face civil penalties.

⁹ Federal Trade Commission, *Protecting Consumer Privacy*, <https://www.ftc.gov/news-events/media-resources/protecting-consumer-privacy> (last visited Jan. 29, 2016).

¹⁰ 16 C.F.R., §§ 313.1-313.3.

¹¹ Federal Trade Commission, *FTC's Privacy Rule and Auto Dealers: FAQ*, (January 2005), <https://www.ftc.gov/tips-advice/business-center/guidance/ftcs-privacy-rule-auto-dealers-faqs> (last visited Jan. 29, 2016).

¹² See 16 C.F.R. § 313.

¹³ See 16 C.F.R. § 314.

¹⁴ *Id.*

¹⁵ Section 501.171, F.S.

¹⁶ "Personal information" includes an individual's first name or first initial and last name in combination with one of the following: a social security number; driver license or identification card number, passport number, military identification number, or other number issued by a governmental entity used to verify identity; a financial account number or credit or debit card number, in combination with any required security code, access code, or password needed to permit access to the financial account; an individual's medical history, mental or physical condition, or medical treatment or diagnosis; or an individual's health insurance policy number or subscriber identification number and any unique identifier used by a health insurer. A user name or e-mail address, in combination with a password or security question and answer is also considered "personal information." Information that is publicly available from a federal, state, or local governmental entity or information that is encrypted, secured, or modified by a method or technology that removes personally identifiable information is not considered "personal information."

¹⁷ A "covered entity" is a sole proprietorship, partnership, corporation, trust, estate, cooperative, association, or other commercial entity that acquires, maintains, stores, or uses personal information.

¹⁸ Section 501.171(4), F.S.

III. Effect of Proposed Changes:

Section 1 of the bill creates s. 320.646, F.S., within the “Florida Automobile Dealers Act” to provide protection for consumer data that is collected by a motor vehicle dealer.

Definitions

The bill defines “consumer data” as “nonpublic personal information” as used in 15 U.S.C. s. 6809(4), which means personally identifiable financial information that is:

- Provided by a consumer to a financial institution, or
- That results from any transaction with the consumer or service performed for the consumer, or
- Obtained by the financial institution in any way.

For purposes of this bill, the personally identifiable financial information (consumer data) must have been collected by a motor vehicle dealer *and* have been directly provided to the licensee or third party. It does not, therefore, include consumer data that has been obtained by a licensee from any other source, or that was otherwise publicly available.

The bill also defines “data management system” as any computer hardware or software system that is owned, leased, or licensed by a motor vehicle dealer.

Compliance with Privacy Regulations

The bill requires a licensee or a third party acting on behalf of the licensee who receives consumer data from a motor vehicle dealer to comply with, and not knowingly cause a dealer to violate, all restrictions on the reuse or disclosure of data established by state and federal law. In the interest of such compliance, a dealer may require a licensee to provide a written description of the licensee’s or third party’s procedures adopted to safeguard consumer data. The licensee’s safeguard procedures must meet, at a minimum, the requirements of the GLBA.

The dealer may also request that a licensee document the consumer data obtained by the licensee or third party from the dealer, in addition to a list of all persons to whom the data has been provided during the preceding 6 months. Both lists must indicate the specific fields of consumer data that were provided to each person. A licensee may exempt the following information from his or her documentation, however:

- The name of a service provider, subcontractor, or consultant, and data provided to him or her, if that person in the course of his or her performance of services on behalf of or for the benefit of the licensee or dealer, agreed to comply with applicable consumer data laws; and
- The name of a person or data provided to him or her, if the dealer has consented in writing that such person may receive consumer data.

A dealer’s request for a list of released data may only be made once every 6 months.

Access to Consumer Data

The bill permits a licensee to be granted direct access to a dealer’s consumer data but only by written document that is separate and apart from the franchise agreement between the two

parties. Conversely, the licensee may not under any circumstances, require that a dealer grant the licensee or a third party access to his or her data management system to collect consumer data. In these cases, the dealer is permitted to furnish consumer data to the licensee in a widely accepted file format and through a third-party dealer who is selected by the dealer.

Civil Claims

Section 1 also requires licensees to compensate dealers for any third-party claims against or damages incurred by the dealer as a result of the licensee's or third party's access, use, or disclosure of the consumer data.

The bill provides that in any cause of action against a licensee for prohibitions or requirements within the bill, the person bringing the action has the burden of proving that the violation was willful or with sufficient frequency to establish a pattern of wrongdoing with respect to such person's consumer data.

Section 2 reenacts s. 320.6992, F.S., to incorporate the newly created section.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill could positively impact motor vehicle dealers who will be compensated by a licensee for any damages incurred as a result of the licensee's or a third party's access, use, or disclosure of consumer data. For that reason, as well as the additional restrictions placed upon licensees in obtaining consumer data from a dealer, the bill could have a negative impact on the licensees.

C. Government Sector Impact:

The bill does not appear to have an impact on state or local government.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 320.646 of the Florida Statutes.

This bill reenacts section 320.6992 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 Transportation on January 20, 2016:

The CS:

- Changes the definition of “consumer data” from information collected or record created by a motor vehicle dealer which contains personal information from which the consumer’s identity could be derived, to the definition of “nonpublic personal information” as defined in 15 U.S.C. s. 6809(4), collected by the dealer and provided to the licensee or third party acting on behalf of the licensee.
- Adds that the definition of “consumer data” does not include the same or similar data obtained by a licensee from any source other than the dealer.
- Clarifies in the bill that the consumer data restrictions apply to a third party *acting on behalf of the licensee*.
- Adds that a licensee may not *knowingly* cause a dealer to violate any applicable restrictions on the reuse or disclosure of consumer data.
- Adds *upon request* from the dealer, the licensee or third party acting on behalf of the licensee must provide a written statement describing the established procedures to safeguard consumer data.
- Regarding the dealer requesting a list of consumer data obtained by the licensee and all persons the dealer’s consumer data has been provided to by the licensee or third party acting on behalf of the licensee, the CS lowers the preceding period of time the list must include, from 12 to 6 months.
- Adds that the list need not include a licensee’s service providers, subcontractors or consultants acting in the course of his or her performance of services on behalf of or for the benefit of the licensee or dealer, or the data provided, if the person also has agreed to comply with applicable consumer data laws. The list also need not include

persons or the data provided to a person if the dealer has consented in writing that such person may receive consumer data.

- Makes a technical change regarding widely accepted file formats, from comma delineated to comma delimited.
- Concerning a dealer granting a licensee access to the dealer's data management system to obtain consumer data, the CS adds the dealer must provide the licensee 30 days' written notice to withdraw such consent.
- Adds a section to the bill providing in any cause of action against a licensee for prohibitions or requirements within the bill, the person bringing the action has the burden of proving that the violation was willful or with sufficient frequency to establish a pattern of wrongdoing.

B. Amendments:

None.

By the Committee on Transportation; and Senator Bradley

596-02373-16

2016960c1

1 A bill to be entitled
 2 An act relating to protection of motor vehicle
 3 dealers' consumer data; creating s. 320.646, F.S.;
 4 defining the terms "consumer data" and "data
 5 management system"; requiring that a licensee or a
 6 third party comply with certain restrictions on reuse
 7 or disclosure of consumer data received from a motor
 8 vehicle dealer; requiring that such person provide a
 9 written statement to the motor vehicle dealer
 10 delineating the established procedures adopted by the
 11 person which meet or exceed certain requirements to
 12 safeguard consumer data; requiring that upon request
 13 of a motor vehicle dealer a licensee provide a list of
 14 the consumer data obtained and all persons to whom any
 15 of the data has been disclosed, subject to certain
 16 requirements; prohibiting a licensee from requiring a
 17 motor vehicle dealer to grant the licensee or third
 18 party access to the dealer's data management system;
 19 requiring a licensee to permit a motor vehicle dealer
 20 to furnish consumer data in a widely accepted file
 21 format and through a third-party vendor selected by
 22 the motor vehicle dealer; authorizing a licensee to
 23 access or obtain consumer data from a motor vehicle
 24 dealer's data management system with the dealer's
 25 express written consent, subject to certain
 26 requirements; requiring the licensee to indemnify the
 27 motor vehicle dealer for certain claims or damages;
 28 providing that a person bringing a specified cause of
 29 action for certain violations must meet certain
 30 requirements; reenacting s. 320.6992, F.S., relating
 31 to the provisions that apply to established systems of
 32 distribution of motor vehicles in this state, to

Page 1 of 5

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

596-02373-16

2016960c1

33 incorporate s. 320.646, F.S., as created by the act,
 34 in a reference thereto; providing an effective date.
 35

36 Be It Enacted by the Legislature of the State of Florida:
 37

38 Section 1. Section 320.646, Florida Statutes, is created to
 39 read:

40 320.646 Consumer data protection.—

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

42 (a) "Consumer data" means "nonpublic personal information"
 43 as such term is defined in 15 U.S.C. s. 6809(4) collected by a
 44 motor vehicle dealer and which is provided by the motor vehicle
 45 dealer directly to a licensee or third party acting on behalf of
 46 a licensee. Consumer data does not include the same or similar
 47 data which is obtained by a licensee from any other source.

48 (b) "Data management system" means a computer hardware or
 49 software system that is owned, leased, or licensed by a motor
 50 vehicle dealer, including a system of web-based applications,
 51 computer software, or computer hardware, whether located at the
 52 motor vehicle dealership or hosted remotely, and that stores and
 53 provides access to consumer data collected or stored by a motor
 54 vehicle dealer. The term includes, but is not limited to,
 55 dealership management systems and customer relations management
 56 systems.

57 (2) Notwithstanding the provisions of any franchise
 58 agreement, with respect to consumer data a licensee or a third
 59 party acting on behalf of a licensee:

60 (a) Shall comply with all, and not knowingly cause a motor
 61 vehicle dealer to violate any, applicable restrictions on reuse

Page 2 of 5

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

596-02373-16

2016960c1

62 or disclosure of the consumer data established by federal or
 63 state law and must provide a written statement to the motor
 64 vehicle dealer upon request describing the established
 65 procedures adopted by the licensee or third party acting on
 66 behalf of the licensee which meet or exceed any federal or state
 67 requirements to safeguard the consumer data, including, but not
 68 limited to, those established in the Gramm-Leach-Bliley Act, 15
 69 U.S.C. ss. 6801 et seq.

70 (b) Shall, upon the written request of the motor vehicle
 71 dealer, provide a written list of the consumer data obtained
 72 from the motor vehicle dealer and all persons to whom any
 73 consumer data has been provided by the licensee or a third party
 74 acting on behalf of a licensee during the preceding 6 months.
 75 The dealer may make such a request no more than once every 6
 76 months. The list must indicate the specific fields of consumer
 77 data which were provided to each person. Notwithstanding the
 78 foregoing, such a list need not include:

79 1. A person to whom consumer data was provided, or the
 80 specific consumer data provided to such person, if the person
 81 was, at the time the consumer data was provided, one of the
 82 licensee's service providers, subcontractors or consultants
 83 acting in the course of such person's performance of services on
 84 behalf of or for the benefit of the licensee or motor vehicle
 85 dealer, provided that the licensee has entered into an agreement
 86 with such person requiring that the person comply with the
 87 safeguard requirements of applicable state and federal law,
 88 including, but not limited to, those established in the Gramm-
 89 Leach-Bliley Act, 15 U.S.C. ss. 6801 et seq; or

90 2. A person to whom consumer data was provided, or the

596-02373-16

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91 specific consumer data provided to such person, if the motor
 92 vehicle dealer has previously consented in writing to such
 93 person receiving the consumer data provided and the motor
 94 vehicle dealer has not withdrawn such consent in writing.

95 (c) May not require that a motor vehicle dealer grant the
 96 licensee or a third party direct or indirect access to the
 97 dealer's data management system to obtain consumer data. A
 98 licensee must permit a motor vehicle dealer to furnish consumer
 99 data in a widely accepted file format, such as comma delimited,
 100 and through a third-party vendor selected by the motor vehicle
 101 dealer. However, a licensee may access or obtain consumer data
 102 directly from a motor vehicle dealer's data management system
 103 with the express consent of the dealer. The consent must be in
 104 the form of a written document that is separate from the
 105 parties' franchise agreement, is executed by the motor vehicle
 106 dealer, and may be withdrawn by the dealer upon 30 days' written
 107 notice to the licensee.

108 (d) Must indemnify the motor vehicle dealer for any third-
 109 party claims asserted against or damages incurred by the motor
 110 vehicle dealer to the extent caused by access to, use of, or
 111 disclosure of consumer data in violation of this section by the
 112 licensee, a third party acting on behalf of the licensee, or a
 113 third party to whom the licensee has provided consumer data.

114 (3) In any cause of action against a licensee pursuant to
 115 s. 320.697 for a violation of paragraphs (2) (a), (2) (b), or
 116 (2) (c), the person bringing the action has the burden of proving
 117 that the violation was willful or with sufficient frequency to
 118 establish a pattern of wrongdoing with respect to such person's
 119 consumer data.

596-02373-16

2016960c1

120 Section 2. For the purpose of incorporating section
121 320.646, Florida Statutes, as created by this act, in a
122 reference thereto, section 320.6992, Florida Statutes, is
123 reenacted to read:

124 320.6992 Application.—Sections 320.60-320.70, including
125 amendments to ss. 320.60-320.70, apply to all presently existing
126 or hereafter established systems of distribution of motor
127 vehicles in this state, except to the extent that such
128 application would impair valid contractual agreements in
129 violation of the State Constitution or Federal Constitution.
130 Sections 320.60-320.70 do not apply to any judicial or
131 administrative proceeding pending as of October 1, 1988. All
132 agreements renewed, amended, or entered into subsequent to
133 October 1, 1988, shall be governed by ss. 320.60-320.70,
134 including any amendments to ss. 320.60-320.70 which have been or
135 may be from time to time adopted, unless the amendment
136 specifically provides otherwise, and except to the extent that
137 such application would impair valid contractual agreements in
138 violation of the State Constitution or Federal Constitution.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/24/16
Meeting/Date

960
Bill Number (if applicable)

Topic CUSTOMER DATA

Amendment Barcode (if applicable)

Name DAVID RAMBA

Job Title _____

Address 120 S. MONROE ST.
Street

Phone 850-727-7087

TALLAHASSEE, FL 32301
City State Zip

Email _____

Speaking: For Against Information

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

Representing FLORIDA AUTOMOBILE DEALERS ASSN.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/24/16

Meeting Date

960

Bill Number (if applicable)

Topic Motor Vehicle Consumer Data

Amendment Barcode (if applicable)

Name Kelly Mallette

Job Title _____

Address 104 West Jefferson Street

Phone (850) 724-3427

Street

Tallahassee, FL 32301

Email kelly@rlboodpa.com

City

State

Zip

Speaking: For Against Information

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

Representing Auto Nation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/24/2016

Meeting Date

Topic _____

Bill Number 960
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)



The Florida Senate

Committee Agenda Request

To: Senator David Simmons, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 2, 2016

I respectfully request that **Senate Bill # 960**, relating to Protection of Motor Vehicle Dealer's Consumer Data, be placed on the:

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

A handwritten signature in black ink, appearing to read "Rob Bradley".

Senator Rob Bradley
Florida Senate, District 7

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 1652

INTRODUCER: Finance and Tax Committee; Community Affairs Committee; and Senators Bradley and Bean

SUBJECT: Discretionary Sales Surtaxes

DATE: February 23, 2016

REVISED: 02/24/16

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Present</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Fournier</u>	<u>Diez-Arguelles</u>	<u>FT</u>	<u>Fav/CS</u>
3.	<u>Present</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/CS/SB 1652 provides that a county may levy a pension liability surtax to fund underfunded defined benefit retirement plans or systems at a rate up to 0.5 percent. The county may not impose a pension liability surtax unless the underfunded defined benefit retirement plan or system is below 80 percent of actuarial funding at the time the ordinance or referendum is passed. The pension liability surtax terminates at the end of the year when the actuarial funding level of the plan or system for which the tax was levied reaches or exceeds 100 percent, or December 31, 2060, whichever occurs earlier.

The county may levy the pension liability surtax only if:

- An employee who enters employment on or after the date that the local government closes an underfunded defined benefit retirement plan or system is prohibited from enrolling in a defined benefit retirement plan or system that will receive the surtax proceeds; and
- The county currently levies a local government infrastructure surtax which is scheduled to terminate and is not subject to renewal.

The Department of Revenue (DOR) is authorized to retain an administrative fee from the surtax proceeds. Proceeds of the tax must be distributed to an eligible defined benefit retirement plan or system if the proceeds have been actuarially recognized; if the proceeds have not been actuarially recognized the local government may borrow against the anticipated revenue and use the

proceeds to repay these debts, reimburse itself for borrowing costs, and make distributions to an eligible defined benefit retirement plan or system.

The bill limits to one percent the combined rate of the Pension Liability Surtax, the Local Government Infrastructure Surtax, the Small County Surtax, the Indigent and Trauma Center Surtax, and the County Public Hospital Surtax.

The surtax must be enacted by ordinance and approved by a majority of electors of the county voting in a referendum.

The Revenue Estimating Conference determined that the surtax authorized by this bill would most likely be levied by the City of Jacksonville, which currently levies a local government infrastructure surtax which is scheduled to terminate no later than December 31, 2030. Since the pension liability surtax must be approved by referendum and cannot take effect until the current local government infrastructure surtax is terminated, the bill's impact on local government revenue is zero or indeterminate, positive.

II. Present Situation:

Local Discretionary Sales Surtaxes

In addition to the six percent state sales tax, the Florida Statutes authorize counties to charge discretionary sales surtaxes,¹ which must be specifically designated by statute.² Eight different types of local discretionary sales surtaxes (also referred to as local option sales taxes) are currently authorized and represent potential revenue sources for county and municipal governments and school districts.³ The local discretionary sales surtaxes apply to all transactions subject to the state tax imposed on sales, use, services, rentals, admissions, and other authorized transactions authorized pursuant to ch. 212, F.S., and communications services as defined for the purposes of ch. 202, F.S.⁴ Section 212.054, F.S., provides for the administration and collection of discretionary sales surtaxes; subsection (5) of that section provides that no discretionary sales surtax or increase or decrease in the rate of any such tax shall take effect on a date other than January 1, and no such tax shall terminate on a day other than December 31. Section 212.054(7)(a), F.S., requires the governing body of any county to notify DOR by October 1 of an ordinance that would result in the termination of the surtax on or after October 1 of that year. Failure to timely provide such notification results in the delay of the termination date by 1 year.

The eight types of local discretionary sales surtaxes are:

- The Charter County and Regional Transportation System Surtax in s. 212.055(1), F.S.;
- The Local Government Infrastructure Surtax in s. 212.055(2), F.S.;
- The Small County Surtax in s. 212.055(3), F.S.;
- The Indigent Care and Trauma Center Surtax in s. 212.055(4), F.S.;
- The County Public Hospital Surtax in s. 212.055(5), F.S.;

¹ A local discretionary sales surtax may also be known as a local option county sales tax. A surtax is an "additional tax imposed on something being taxed or on the primary tax itself." BLACK'S LAW DICTIONARY 704 (3rd ed. 2006).

² Sections 212.054 and 212.055, F.S.

³ Florida Revenue Estimating Conference, *Florida Tax Handbook*, pg. 215 (2016).

⁴ *Id.*

- School Capital Outlay Surtax in s. 212.055(6), F.S.;
- The Voter-Approved Indigent Care Surtax in s. 212.055(7), F.S.; and
- The Emergency Fire Rescue Services and Facilities Surtax in s. 212.055(8), F.S.

A discretionary sales surtax applies to transactions if:⁵

- The selling dealer delivers taxable goods or taxable service in or into a county with a surtax.
- The event for which an admission is charged is located in a county with a surtax. Tax is due at the rate in the county where the event takes place.
- The consumer of electric power or energy is located in a county with a surtax.
- The sale of prepaid calling arrangements occurs in a county with a surtax.
- The location or delivery of tangible personal property covered by a service warranty is within a county with a surtax. The person receiving consideration for the issuance of a service warranty from the agreement holder must collect surtax at the rate imposed by that county.
- The commercial real property that is leased or rented, or upon which a license for use is granted, is in a county with a surtax.
- The rental of living or sleeping accommodations (transient rentals) occurs in a county with a surtax.
- A registered dealer owing use tax on purchases or leases is located in a county with a surtax.

During the 2015-16 local fiscal year, the 49 county governments and 15 school districts levying one or more local discretionary sales surtaxes will realize an estimated \$2.15 billion in revenue.⁶

Local Government Infrastructure Surtax

The Local Government Infrastructure Surtax is one of the surtaxes authorized by s. 212.055, F.S., which may be levied by the governing authority in each county after a majority vote of the electorate through a local referendum.⁷ The surtax may be levied at 0.5 percent or 1.0 percent.⁸ Proceeds are distributed to the county and the municipalities within the county according to an interlocal agreement between the county governing authority and the governing bodies of the municipalities representing a majority of the county's municipal population, or if there is no interlocal agreement, according to the formula in s. 218.62, F.S.⁹

The proceeds of the surtax must be expended only to:

- Finance, plan, and construct infrastructure;
- Acquire land for public recreation, conservation, or protection of natural resources;
- Provide loans, grants, or rebates to residential or commercial property owners who make energy efficiency improvements to their residential or commercial property, if a local government ordinance authorizing the use is approved by referendum; or

⁵ Florida Department of Revenue, *Florida's Discretionary Sales Surtax, 2*, available at http://dor.myflorida.com/Forms_library/current/gt800019.pdf (last visited Oct. 28, 2015).

⁶ Office of Economic and Demographic Research, *Local Government Financial Information Handbook*, at 152 (December 2015) available at <http://www.edr.state.fl.us/Content/local-government/reports/lghih15.pdf> (last visited Jan. 21, 2016).

⁷ Section 212.055(2)(a)1., F.S.

⁸ However, the Local Government Infrastructure Surtax, Small County Surtax, Indigent Care and Trauma Center Surtax, and County Public Hospital Surtax are limited to a maximum combined rate of 1 percent. Section 212.055(2)(h), F.S.

⁹ Section 212.055(2)(c)1., F.S. The agreement may include a school district with the consent of the county governing authority and the governing bodies of the municipalities.

- Finance the closure of county-owned or municipally-owned solid waste landfills that have been closed or are required to be closed by order of the Department of Environmental Protection.¹⁰

While all counties are authorized to levy the surtax, only 18 counties currently do so. Two counties levy the surtax at the rate of 0.5 percent: Duval and Hillsborough. Sixteen counties levy the surtax at the rate of one percent: Charlotte, Clay, Escambia, Glades, Highlands, Indian River, Lake, Leon, Monroe, Osceola, Pasco, Pinellas, Putnam, Sarasota, Seminole, and Wakulla. During the 2015-2016 Fiscal Year, these counties are expected to receive revenues of \$691,831,985.¹¹ All 18 counties that currently levy the tax are scheduled to terminate, with the latest termination date being Leon County on Dec. 31, 2039.¹²

The surtax may not be levied beyond the time established in the ordinance if the surtax was levied pursuant to a referendum held before July 1, 1993.¹³ If the pre-July 1, 1993, ordinance did not limit the period of the levy, the surtax may not be levied for more than 15 years.¹⁴ There is no state-mandated limit on the length of levy for those surtax ordinances enacted after July 1, 1993. The levy may only be extended by voter approval in a countywide referendum.¹⁵

Combined Tax Rate Caps for Discretionary Sales Surtaxes

Certain discretionary sales surtax levy combinations are subject to tax rate caps such that the combined rate of the surtaxes may not exceed one percent.¹⁶

Actuarial Soundness of Retirement Systems

Part VII of Chapter 112 of the Florida Statutes governs the Actuarial Soundness of Retirement Systems. The intent of this part is to ensure that governmental retirement systems or plans are “managed, administered, operated, and funded in such a manner as to maximize the protection of public employee retirement benefits.”¹⁷ The part establishes minimum standards for the operation and funding of public employee retirement systems and plans.¹⁸ The provisions of part VII are applicable to “any and all units, agencies, branches, departments, boards, and institutions of state, county, special district, and municipal governments which participate in, operate, or administer a retirement system or plan for public employees, funded in whole or in part by public funds.”¹⁹ Each retirement system or plan under part VII must have regularly scheduled actuarial

¹⁰ Section 212.055(2)(d), F.S.

¹¹ Dollar amounts are estimates. Florida Revenue Estimating Conference, *Florida Tax Handbook*, pg. 226 (2015).

¹² See Office of Economic and Demographic Research, *Local Government Financial Information Handbook*, at pgs. 154-155 (December 2015) available at <http://www.edr.state.fl.us/Content/local-government/reports/lghih15.pdf> (last visited Jan. 21, 2016).

¹³ Section 212.055(2)(a)2., F.S.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See sections 212.055(2)(h), 212.055(3)(f), 212.055(4)(b)5., and 212.055(5)(f), F.S.

¹⁷ Section 112.61, F.S.

¹⁸ *Id.*

¹⁹ Section 112.62, F.S.

reports prepared and certified by an enrolled actuary.²⁰ The actuarial report must include, but is not limited to, the following:

- Adequacy of employer and employee contribution rates in meeting levels of employee benefits provided in the system and changes, if any, needed in such rates to achieve or preserve a level of funding deemed adequate to enable payment through the indefinite future of the benefit amounts prescribed by the system, which shall include a valuation of present assets, based on statement value, and prospective assets and liabilities of the system and the extent of unfunded accrued liabilities, if any.
- A plan to amortize any unfunded liability pursuant to s. 112.64, F.S., and a description of actions taken to reduce the unfunded liability.
- A description and explanation of actuarial assumptions.
- A schedule illustrating the amortization of unfunded liabilities, if any.
- A comparative review illustrating the actual salary increases granted and the rate of investment return realized over the 3-year period preceding the actuarial report with the assumptions used in both the preceding and current actuarial reports.
- Effective January 1, 2016, the mortality tables used in either of the two most recently published actuarial valuation reports of the Florida Retirement System.
- A statement by the enrolled actuary that the report is complete and accurate and that in his or her opinion the techniques and assumptions used are reasonable and meet the requirements and intent of this act.²¹

Section 112.64, F.S., governs the amortization of unfunded liability for such retirement systems or plans. For those plans in existence on October 1, 1980, the total contributions to the retirement system or plan shall be sufficient to meet the normal cost of the retirement system or plan and to amortize the unfunded liability, if any, within 40 years; however, nothing contained in this subsection permits any retirement system or plan to amortize its unfunded liabilities over a period longer than that which remains under its current amortization schedule.²² For a retirement system or plan which comes into existence after October 1, 1980, the unfunded liability, if any, shall be amortized within 40 years of the first plan year.²³ The net increase, if any, in unfunded liability under the plan arising from significant plan amendments adopted, changes in actuarial assumptions, changes in funding methods, or actuarial gains or losses shall be amortized within 30 plan years.²⁴

III. Effect of Proposed Changes:

Section 1 amends s. 112.64, F.S., providing that the proceeds of a pension liability surtax imposed by a county pursuant to s. 212.055, F.S., which is levied for the purpose of funding or amortizing the unfunded liability of a defined benefit retirement plan or system, excluding the Florida Retirement System, shall be actuarially recognized, and the county shall apply the present value of the total projected proceeds of the surtax to reduce the unfunded liability or to amortize it as part of the county's annual required contribution, beginning with the fiscal year immediately following approval of the pension liability surtax. The unfunded liability

²⁰ Section 112.63(1), F.S.

²¹ *Id.*

²² Section 112.64(2), F.S.

²³ Section 112.64(3), F.S.

²⁴ Section 112.64(4), F.S.

amortization schedule must be adjusted beginning with the fiscal year immediately following approval of the pension liability surtax and amortized over a period of 30 years.

The payroll of all employees covered by a closed retirement plan or system that receives funds from the pension liability surtax must be included in determining the unfunded liability amortization schedule for the closed plan, regardless of the plan in which the employees currently participate, and the payroll growth assumption must be adjusted to reflect the payroll of those employees when calculating the amortization of the unfunded liability.

Section 2 amends s. 212.055, F.S., authorizing the governing body of a county to levy a pension liability surtax to fund underfunded defined benefit retirement plans or systems, pursuant to an ordinance conditioned to take effect upon approval by a majority vote of the electors of the county voting in a referendum, at a rate that may not exceed 0.5 percent. The county may not impose a pension liability surtax unless the underfunded defined benefit retirement plan or system is below 80 percent of actuarial funding at the time the ordinance or referendum is passed. The most recent actuarial report submitted to the Department of Management Services pursuant to s. 112.63, F.S., must be used to establish the level of actuarial funding for purposes of determining eligibility to impose the surtax. The governing body of a county may impose the surtax only if:

- An employee, including a police officer or firefighter, who enters employment on or after the date that the local government closes an underfunded defined benefit retirement plan or system, is prohibited from enrolling in a defined benefit retirement plan or system that will receive the surtax proceeds.
- The county currently levies a local government infrastructure surtax pursuant to s. 212.055(2), F.S., which is scheduled to terminate and is not subject to renewal. The pension liability surtax does not take effect until the local government infrastructure surtax is terminated.

A referendum to adopt a pension liability surtax must meet the requirements of s. 101.161, F.S., and must include a brief and general description of the purposes for which the surtax proceeds will be used. Section 101.161, F.S., requires the public measure to include a ballot summary that is printed in clear and unambiguous language on the ballot. The ballot summary must be an explanatory statement of the chief purpose of the measure and may not exceed 75 words in length.²⁵ Furthermore, the Financial Impact Estimating Conference must prepare a separate financial impact statement concerning the measure in accordance with s. 100.371, F.S.²⁶

Pursuant to s. 212.054(4), F.S., the proceeds of the surtax collected under s. 212.055(9), F.S., less an administrative fee that may be retained by the DOR, shall be distributed by the DOR to the local government. The local government shall distribute the proceeds it receives from the DOR to an eligible defined benefit retirement plan or system, except the Florida Retirement System, if the proceeds have been actuarially recognized as provided for in s. 112.64(6), F.S. If the proceeds have not been actuarially recognized, the local government may distribute them to an eligible defined benefit retirement plan, pledge the proceeds to repay debts incurred for the purpose of making advanced payments toward the unfunded liability of an underfunded defined

²⁵ Section 101.161(1), F.S.

²⁶ *Id.*

benefit retirement plan or system, and to reimburse itself for any borrowing costs associated with such debts.

The ordinance providing for the imposition of the pension liability surtax must specify the method of determining the percentage of the proceeds, and the frequency of such payments, distributed to each eligible defined benefit retirement plan or system. The ordinance must also specify the local government's intention to incur debt for the purpose of making advanced payments toward the unfunded liability of an underfunded defined benefit retirement plan or system, if the proceeds are not actuarially recognized.

A pension liability surtax shall terminate on December 31 of the year in which the actuarial funding level is expected to reach or exceed 100 percent for the defined benefit retirement plan or system for which the surtax was levied, or December 31, 2060, whichever occurs first. The level of actuarial funding must be based upon the most recent actuarial report submitted to the Department of Management Services pursuant to s. 112.63, F.S.

The bill limits to one percent the combined rate of the Pension Liability Surtax, the Local Government Infrastructure Surtax, the Small County Surtax, the Indigent and Trauma Center Surtax, and the County Public Hospital Surtax.

Section 3 provides an effective date of July 1, 2016.

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:

The Revenue Estimating Conference determined that the surtax authorized by CS/CS/SB 1652 would most likely be levied by the City of Jacksonville, which currently has three substantially underfunded public pension funds²⁷ and has adopted a resolution urging the Florida Legislature to adopt such legislation.²⁸ Duval County currently levies a local

²⁷ Material provided by Thomas Griffin, registered lobbyist for the city of Jacksonville (on file with the Senate Finance and Tax Committee).

²⁸ Council of the City of Jacksonville, *Resolution 2016-17 in Support of Sales Surtax Extension* (on file with the Senate Finance and Tax Committee).

government infrastructure surtax which is scheduled to terminate no later than December 31, 2030.²⁹ Since the pension liability surtax must be approved by referendum and may not take effect until the current local government infrastructure surtax is terminated, the bill's impact on local government revenue is zero or indeterminate, positive.³⁰

B. Private Sector Impact:

The bill does not directly impact the private sector, but if a county approves the surtax by referendum, it will increase the tax rates on transactions in the county.

C. Government Sector Impact:

The bill provides additional taxing authority to certain counties.

The Department of Revenue has determined that the bill will have an insignificant fiscal impact on the department.³¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 112.64 and 212.055.

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 Finance and Tax on February 8, 2016:

The CS/CS makes several changes to clarify the administration of the pension liability surtax and explicitly authorizes the local government to borrow against surtax proceeds to make advanced payments toward the unfunded liability of an underfunded plan or system.

CS by Community Affairs on January 26, 2016:

Limits to one percent the combined rate of the Pension Liability surtax, the Local Government Infrastructure surtax, the Small County Surtax, the Indigent and Trauma Center surtax, and the County Public Hospital surtax.

²⁹ Office of Economic and Demographic Research, *2015 Local Government Financial Information Handbook*, p. 154.

³⁰ For the local fiscal year ending Sept. 30, 2016, a 0.5 percent surtax in Duval County would yield \$81,044,120.

³¹ Florida Department of Revenue, *Senate Bill 1652 Fiscal Analysis*, 3 (Jan. 13, 2016) (on file with the Senate Committee on Finance and Tax).

B. Amendments:

None.

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

By the Committees on Finance and Tax; and Community Affairs; and
Senators Bradley, Bean, and Hutson

593-03183-16

20161652c2

A bill to be entitled

An act relating to discretionary sales surtaxes;
amending s. 112.64, F.S.; authorizing a county to
apply proceeds of a pension liability surtax toward
reducing the unfunded liability of a defined benefit
retirement plan or system; specifying the method of
determining the amortization schedule if a surtax is
approved; amending s. 212.055, F.S.; authorizing a
county to levy a pension liability surtax by ordinance
if certain conditions are met; prescribing the form of
the ballot statement; requiring the Department of
Revenue to distribute the surtax proceeds, less
administrative fees; specifying the manner in which a
local government may use the surtax proceeds;
prescribing requirements for the ordinance that
provides for the imposition of the surtax; specifying
conditions under which the surtax terminates; limiting
the combined rate of specified discretionary sales
surtaxes; providing an effective date.

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

Section 1. Subsection (6) of section 112.64, Florida
Statutes, is renumbered as subsection (7), and a new subsection
(6) is added to that section, to read:

112.64 Administration of funds; amortization of unfunded
liability.—

(6) (a) Notwithstanding any other provision of this part,
the proceeds of a pension liability surtax imposed by a county
pursuant to s. 212.055, which is levied for the purpose of
funding or amortizing the unfunded liability of a defined

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

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benefit retirement plan or system, excluding the Florida
Retirement System, shall be actuarially recognized, and the
county shall apply the present value of the total projected
proceeds of the surtax to reduce the unfunded liability or to
amortize it as part of the county's annual required
contribution, beginning with the fiscal year immediately
following approval of the pension liability surtax. The unfunded
liability amortization schedule must be adjusted beginning with
the fiscal year immediately following approval of the pension
liability surtax and amortized over a period of 30 years.

(b) The payroll of all employees covered by a closed
retirement plan or system that receives funds from the pension
liability surtax must be included in determining the unfunded
liability amortization schedule for the closed plan, regardless
of the plan in which the employees currently participate, and
the payroll growth assumption must be adjusted to reflect the
payroll of those employees when calculating the amortization of
the unfunded liability.

Section 2. Subsection (9) is added to section 212.055,
Florida Statutes, to read:

212.055 Discretionary sales surtaxes; legislative intent;
authorization and use of proceeds.—It is the legislative intent
that any authorization for imposition of a discretionary sales
surtax shall be published in the Florida Statutes as a
subsection of this section, irrespective of the duration of the
levy. Each enactment shall specify the types of counties
authorized to levy; the rate or rates which may be imposed; the
maximum length of time the surtax may be imposed, if any; the
procedure which must be followed to secure voter approval, if

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

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61 required; the purpose for which the proceeds may be expended;
 62 and such other requirements as the Legislature may provide.
 63 Taxable transactions and administrative procedures shall be as
 64 provided in s. 212.054.

65 (9) PENSION LIABILITY SURTAX.—

66 (a) The governing body of a county may levy a pension
 67 liability surtax to fund underfunded defined benefit retirement
 68 plans or systems, pursuant to an ordinance conditioned to take
 69 effect upon approval by a majority vote of the electors of the
 70 county voting in a referendum, at a rate that may not exceed 0.5
 71 percent. The county may not impose a pension liability surtax
 72 unless the underfunded defined benefit retirement plan or system
 73 is below 80 percent of actuarial funding at the time the
 74 ordinance or referendum is passed. The most recent actuarial
 75 report submitted to the Department of Management Services
 76 pursuant to s. 112.63 must be used to establish the level of
 77 actuarial funding for purposes of determining eligibility to
 78 impose the surtax. The governing body of a county may only
 79 impose the surtax if:

80 1. An employee, including a police officer or firefighter,
 81 who enters employment on or after the date when the local
 82 government certifies that the defined benefit retirement plan or
 83 system formerly available to such an employee has been closed
 84 may not enroll in a defined benefit retirement plan or system
 85 that will receive surtax proceeds.

86 2. The county currently levies a local government
 87 infrastructure surtax pursuant to subsection (2) which is
 88 scheduled to terminate and is not subject to renewal.

89 3. The pension liability surtax does not take effect until

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20161652c2

90 the local government infrastructure surtax described in
 91 subparagraph 2. is terminated.

92 (b) A referendum to adopt a pension liability surtax must
 93 meet the requirements of s. 101.161 and must include a brief and
 94 general description of the purposes for which the surtax
 95 proceeds will be used.

96 (c) Pursuant to s. 212.054(4), the proceeds of the surtax
 97 collected under this subsection, less an administrative fee that
 98 may be retained by the department, shall be distributed by the
 99 department to the local government.

100 (d) The local government may use the pension liability
 101 surtax proceeds in the following manner:

102 1. If the proceeds of the pension liability surtax have
 103 been actuarially recognized as provided for in s. 112.64(6), the
 104 local government must distribute the proceeds to an eligible
 105 defined benefit retirement plan or system, not including the
 106 Florida Retirement System.

107 2. If the proceeds of the pension liability surtax have not
 108 been actuarially recognized, the local government is authorized
 109 to distribute the proceeds to an eligible defined benefit
 110 retirement plan or system, not including the Florida Retirement
 111 System, to pledge the proceeds of the surtax to repay debts
 112 incurred for the purpose of making advanced payments toward the
 113 unfunded liability of an underfunded defined benefit retirement
 114 plan or system, and to reimburse itself from the proceeds of the
 115 surtax for any borrowing costs associated with such debts.

116 (e) The ordinance providing for the imposition of the
 117 pension liability surtax must specify how the proceeds will be
 118 used:

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119 1. The ordinance must specify the method of determining the
120 percentage of the proceeds, and the frequency of such payments,
121 distributed to each eligible defined benefit retirement plan or
122 system if the proceeds of the pension liability surtax are
123 actuarially recognized as provided for in s. 112.64(6).

124 2. The ordinance must specify the local government's
125 intention to incur debt for the purpose of making advanced
126 payments toward the unfunded liability of an underfunded defined
127 benefit retirement plan or system if the proceeds of the pension
128 liability surtax are not actuarially recognized as provided for
129 in s. 112.64(6).

130 (f) A pension liability surtax imposed pursuant to this
131 subsection shall terminate on December 31 of the year in which
132 the actuarial funding level is expected to reach or exceed 100
133 percent for the defined benefit retirement plan or system for
134 which the surtax was levied or December 31, 2060, whichever
135 occurs first. The most recent actuarial report submitted to the
136 Department of Management Services pursuant to s. 112.63 must be
137 used to establish the level of actuarial funding.

138 (g) Notwithstanding any other provision of this section, a
139 county may not levy local option sales surtaxes authorized in
140 this subsection and subsections (2), (3), (4), and (5) in excess
141 of a combined rate of 1 percent.

142 Section 3. This act shall take effect July 1, 2016.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/24

Meeting Date

1652

Bill Number (if applicable)

Topic Local Gov't Surtax

Amendment Barcode (if applicable)

Name Lenny Curry

Job Title Mayor

Address _____

Phone _____

Street

Jacksonville FL 32202

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing City of Jacksonville

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

1652
Bill Number (if applicable)

Meeting Date _____

Topic JACKSONVILLE TAX REPURPOSING

Amendment Barcode (if applicable) _____

Name CHARLIE LATHAM

Job Title MAYOR

Address 11 N. THIRD STREET

Phone 904-910-4004

City JAX BEACH FL State FL Zip 32250

Email CLATHAM@JAXBEACHFL.NET

Speaking: For Against Information

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

Representing CITY OF JACKSONVILLE BEACH

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No
(NOT FOR CITY OF JAX BEACH)

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

SB 1652
Bill Number (if applicable)

Meeting Date _____

Topic Pension Bill

Amendment Barcode (if applicable) _____

Name Randy Wyse

Job Title President Int Assoc. of Firefighters

Address 625 Stockton St

Phone 904-334-8470

Jacksonville FL 32204
City State Zip

Email RWyse@Comcast.net

Speaking: For Against Information

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

Representing Jacksonville Assoc. of Firefighters

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/24/16

Meeting Date

1652

Bill Number (if applicable)

Topic Pension Bill

Amendment Barcode (if applicable)

Name RANDY REAVES

Job Title Police Officer (FOP 5-30)

Address 501 E Bay St

Phone 472-8564

Jax FL 32602

Email _____

Speaking: For Against Information

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

Representing Fraternal Order of Police

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/24/2016

Meeting Date

Topic _____

Bill Number 1652
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

180



The Florida Senate

Committee Agenda Request

To: Senator David Simmons, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 15, 2016

I respectfully request that **Senate Bill # 1652**, relating to Discretionary Sales Surtaxes, be placed on the:

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

A handwritten signature in black ink, appearing to read "Rob Bradley".

Senator Rob Bradley
Florida Senate, District 7

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/CS/SB 912

INTRODUCER: Rules Committee; Fiscal Policy Committee; Criminal Justice Committee; and Senators Flores and Soto

SUBJECT: Fraudulent Activities Associated with Payment Systems

DATE: February 24, 2016 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Blizzard</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Favorable</u>
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Fav/CS</u>
4.	<u>Erickson</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 912 addresses fraudulent activity occurring at fuel stations by increasing the penalties for offenses related to the fraudulent activity and requiring retail fuel pumps that have credit card scanners to have certain security measures. Related to the offenses, the bill:

- Increases the felony classification for unlawful conveyance of fuel;
- Revises the offense of trafficking in counterfeit credit cards and related documents to include possession and provide that it is unlawful to traffic in or possess 5 such cards or documents (current law: 10);
- Creates tiered penalties for the revised offense of trafficking in or possession of counterfeit cards and related documents based upon the number of items involved; and
- Ranks the offenses in the Criminal Punishment Code offense severity level ranking chart.

The Legislature's Office of Economic and Demographic Research preliminary estimate is that the bill would have a positive indeterminate impact on state prison beds, which means that the bill will require unquantifiable increase in prison beds.

II. Present Situation:

Fraudulent Activity Occurring at Fuel Stations

It is the responsibility of the Department of Agriculture and Consumer Services (DACS) to inspect all measuring devices used in selling or distributing petroleum fuel at wholesale and retail.¹ As part of the inspections of retail pumps, the DACS also inspects pumps for devices that steal credit card information from consumers, commonly called “skimmers.” According to the DACS, the consumer’s credit card information obtained by a skimmer is often used to purchase gasoline fraudulently, and the fuel is then sold on the black market. Both the consumer and the retailer are victimized by the fraudulent fuel purchase and credit card theft. The DACS reports that “in some cases, gas stations are losing thousands of dollars a day in the theft of fuel by use of counterfeit/compromised credit cards.” There are no provisions in current law that would require security measures to be in place to reduce the possibility of skimmers being placed into pumps or to alert a consumer that tampering has been done to a pump. Further, current penalties for the theft of fuel are determined by the amount stolen.²

Unlawful Conveyance of Fuel

It is unlawful for any person to maintain, or possess any conveyance or vehicle that is equipped with, fuel tanks, bladders, drums, or other containers that do not conform to 49 C.F.R. or have not been approved by the United States Department of Transportation for the purpose of hauling, transporting, or conveying motor or diesel fuel.³

A person commits a third degree felony if he or she has attempted to or has fraudulently obtained motor or diesel fuel by:

- Presenting a fraudulent credit card or a credit card account number;⁴
- Using unauthorized access to any computer network; or
- Using a fraudulently scanned or lost or stolen payment access device, whether a credit card or contactless device.⁵

The described offense is not currently ranked in the offense severity level ranking chart in s. 921.0022, F.S. A third degree felony that is not ranked in the chart is ranked as a Level 1 offense pursuant to the “default” provisions of s. 921.0023, F.S.⁶

¹ Section 525.07, F.S.

² DACs, *Legislative Bill Analysis of SB 912* (November 24, 2015), (on file with the Senate Committee on Criminal Justice).

³ Section 316.80(1), F.S.

⁴ Section 817.625, F.S., defines a number of payment card offenses including use of a scanning device or reencoder to access and store information on the payment card without the permission of the authorized user of the payment card and with the intent to defraud the authorized user, the issuer of the authorized user’s card, or a merchant.

⁵ Section 316.80(2), F.S.

⁶ Section 921.0022, F.S., ranks offenses for sentencing from Level 1, which is the least severe, to Level 10, the most severe.

Trafficking In or Possession of Counterfeit Cards

It is a second degree felony for a person to traffic ⁷in or attempt to traffic in 10 or more counterfeit credit cards, invoices, vouchers, sales drafts, or other representations or manifestations of counterfeit credit cards, or credit card account numbers of another in any 6-month period.⁸ This offense does not specifically state that *possession* of counterfeit credit cards is unlawful.

The described offense is not currently ranked in the offense severity level ranking chart in s. 931.0022, F.S. A second degree felony that is not ranked in the chart is ranked as a Level 4 offense pursuant to the “default” provisions of s. 921.0023, F.S.⁹

III. Effect of Proposed Changes:

The bill addresses fraudulent activity occurring at fuel stations by:

- Increasing the felony classification for unlawful conveyance of fuel;
- Requiring retail fuel pumps that have credit card scanners to have certain security measures;
- Revising the offense of trafficking in and possession of counterfeit cards and related documents;
- Creating tiered penalties for trafficking in or possession of counterfeit cards or related documents; and
- Ranking such offenses in the Criminal Punishment Code offense severity ranking chart.

Section 1 amends s. 316.80, F.S., to increase the felony classification for unlawful conveyance of fuel to a second degree felony. Currently, the unlawful conveyance of fuel is a third degree felony.¹⁰

Section 2 amends s. 527.07, F.S., to require each person who owns or manages a retail petroleum fuel measuring device (fuel pump) with a scanning device to affix or install a security measure on the fuel pump to restrict the unauthorized access of customer payment card information.

The bill requires one of the following security measures:

- Placement of a pressure-sensitive security tape over the panel opening that leads to the scanning device for the fuel pump in a manner that will restrict the unauthorized opening of the panel;
- A device or system that will render the fuel pump or scanning device inoperable if there is an unauthorized opening of the panel;
- A device or system that encrypts the customer payment card information in the scanning device; or
- Another security measure approved by the DACS.

⁷ Section 817.58(10), F.S., defines “traffic” to mean “sell, transfer, distribute, dispense, or otherwise dispose of a property or to buy, receive, possess, obtain control of, or use the property with the intent to sell, transfer, distribute, or otherwise dispose of such property.”

⁸ Section 817.611, F.S.

⁹ *Supra* note 6.

¹⁰ A second degree felony carries a maximum penalty of 15 years in state prison, and a fine of up to \$10,000. A third degree felony carries a maximum penalty of 5 years in state prison, and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

The bill authorizes the DACS to prohibit the use of a retail fuel pump until a security measure is installed, replaced, or repaired. The DACs must provide written notice to the owner or manager of noncompliance and allow the owner or manager 5 days to come into compliance.

If a retail fuel pump is found out of compliance more than once then the DACS is authorized to immediately take the device out of service.

The terms “scanning device” and “payment card” have the same meanings as defined in s. 817.625, F.S.¹¹

Section 3 amends the definition of “traffic” in s. 817.58, F.S., which is relevant to trafficking in counterfeit credit cards, to delete reference to “possess.” Currently, the term “traffic,” is defined to include, in part, possession with the intent to sell, transfer, distribute, dispense, or otherwise dispose of property.

Sections 4 amends s. 817.611, F.S., to revise the offense of trafficking in counterfeit credit cards and related documents to include possession and provide that this offense applies to trafficking in or possession of 5 such cards or documents (current law: 10).

The bill also creates tiered penalties for the revised offense of trafficking in or possession of counterfeit cards and related documents¹² based upon the number of items involved. Specifically, the bill provides that trafficking in or possession of:

- 15-14 counterfeit cards or related documents is a second degree felony;
- 15-49 counterfeit cards or related documents is a second degree felony; and
- 50 or more counterfeit cards or related documents is a first degree felony.¹³

Section 5 amends s. 921.0022, F.S., to rank the unlawful conveyance of fuel as a Level 5 offense in the Criminal Punishment Code offense severity level ranking chart. Currently, this offense is ranked by default as a Level 1 offense.¹⁴

Currently, the offense of trafficking in counterfeit credit cards is ranked by default as a Level 4 offense. The bill provides that trafficking in or possession of:

- 5-14 counterfeit cards or related documents is a Level 5 second degree felony;
- 15-49 counterfeit cards or related documents is a Level 7 second degree felony; and

¹¹ Section 817.625(1)(a), F.S. defines “scanning device” as a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card. Section 817.625(1)(c), F.S., defines “payment card” as a credit card, charge card, debit card, or any other card that is issued to an authorized card user and that allows the user to obtain, purchase, or receive goods, services, money, or anything else of value from a merchant.

¹² “Related documents” are defined as invoices, vouchers, sales drafts, or other representations or manifestations of a counterfeit credit card or a credit card number of a cardholder if not authorized by the cardholder.

¹³ A first degree felony is generally punishable by up to 30 years imprisonment and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

¹⁴ An offender with a Level 1 primary offense would likely score a nonstate prison sanction as the lowest permissible sentence absent significant prior convictions. The possibility of a defendant receiving a prison sentence is greater if the offense is ranked in Level 5 rather than Level 1.

- 50 or more counterfeit cards or related documents is a Level 8 first degree felony.¹⁵

Section 6 provides that the bill is effective October 1, 2016.

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 bill may have a fiscal impact on owners or managers of retail fuel pump due to the requirement for the installation of one or more security measures on such devices.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation has not reviewed CS/CS/CS/SB 912. A preliminary estimate by the Legislature's Office of Economic and Demographic Research (EDR) is that the bill would have a positive indeterminate impact on state prison beds, which means that the bill will require an unquantifiable increase in prison beds.

The EDR provided the following information regarding the penalty provisions of the bill:

Unlawful Conveyance of Fuel

The bill increases the offense to a second degree felony ranked in Level 5 of the Criminal Punishment Code offense severity level ranking chart. According to the Department of Corrections, in FY 2014-15, there was one (adj.) offender sentenced for fraudulently obtaining motor or diesel fuel, but that person did not receive a prison sentence. In FY 2014-2015, the incarceration rate for a Level 5 second degree felony was 37.3 percent.

¹⁵ The possibility of a defendant receiving a prison sentence is greater if the offense is a Level 5 rather than a Level 4. An offender with a Level 7 or Level 8 primary offense would score prison as the lowest permissible sentence.

Trafficking in or Possession of Counterfeit Credit Cards:

The bill revises the offense of trafficking in counterfeit credit cards and related documents to include possession and provide that this offense applies to trafficking in or possession of 5 such cards or documents (current law: 10).

The bill also creates tiered penalties for the revised offense of trafficking in or possession of counterfeit cards and related documents based upon the number of items involved and ranks those penalties in the Criminal Punishment Code offense severity ranking chart. Specifically, the bill provides that trafficking in or possession of:

- 15-14 counterfeit cards or related documents is a Level 5 second degree felony;
- 15-49 counterfeit cards or related documents is a Level 7 second degree felony; and
- 50 or more counterfeit cards or related documents is a Level 8 first degree felony.

According to the Department of Corrections, in FY 2014-15:

- There were 35 (adj.) offenders sentenced for trafficking in counterfeit credit cards, and 12 (adj.) received a prison sentence (mean sentence length of 30.4 months and incarceration rate of 34.3 percent adj. to 33.3 percent unadj.);
- The incarceration rate for a second degree felony ranked in Level 7 was 57.1 percent; and
- The incarceration rate for a Level 8 first degree felony was 74.7 percent.

The EDR states that it is unknown how many cards were involved in each separate offense.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.80, 525.07, 817.58, 817.611, and 921.0022.

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

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

CS/CS/CS by Rules on February 24, 2016:

- Revises the definition of “traffic” in s. 817.58, F.S., which is relevant to trafficking in counterfeit credit cards, to delete reference to “possesses.”
- Provides that trafficking in, attempting to traffic in, or possessing:

- 15-49 counterfeit cards or related documents is a Level 7 second degree felony;
and
- 50 or more counterfeit cards or related documents is a Level 8 first degree felony.

CS/CS by Fiscal Policy on February 17, 2016:

The committee substitute establishes a tiered penalty system for persons who traffic in, attempt to traffic in, or possess counterfeit cards or related documents depending on the number of cards trafficked or possesses.

CS by Criminal Justice on January 25, 2016:

- Requiring that each person who owns or manages a retail petroleum fuel measuring device have affixed to or installed onto the measuring device a security measure to restrict the unauthorized access of customer payment card information;
- Providing that the security measure must include one or more specified security measures;
- Providing that the owner or manager of a retail petroleum fuel measuring device without a security measure or with an altered or damaged security measure, upon written notice from the department of such noncompliance, shall have five calendar days to comply; and
- Providing that after the fifth day of noncompliance, the department may prohibit further use of the retail petroleum fuel measuring device until a security measure is installed, replaced, or repaired.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/24/2016	.	
	.	
	.	
	.	

The Committee on Rules (Negron) recommended the following:

Senate Amendment (with title amendment)

Delete lines 99 - 376

and insert:

Section 3. Subsection (10) of section 817.58, Florida Statutes, is amended to read

817.58 Definitions.—As used in ss. 817.57-817.685:

(10) "Traffic" means to sell, transfer, distribute, dispense, or otherwise dispose of a property or to buy, receive, ~~possess~~, obtain control of, or use property with the intent to sell, transfer, distribute, dispense, or otherwise dispose of



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12 such property.

13 Section 4. Section 817.611, Florida Statutes, is amended to
14 read:

15 817.611 Traffic in or possess counterfeit credit cards.—

16 (1) As used in this section, the term "related document"
17 means an invoice, a voucher, a sales draft, or other
18 representation or manifestation of a counterfeit credit card or
19 a credit card number of a cardholder if not authorized by the
20 cardholder.

21 (2) A ~~Any~~ person who traffics in, ~~or~~ attempts to traffic
22 in, or possesses ~~10 or more~~ counterfeit credit cards or related
23 documents, ~~invoices, vouchers, sales drafts, or other~~
24 representations or manifestations of counterfeit credit cards,
25 or credit card account numbers of another in any 6-month period
26 is guilty of:

27 (a) A felony of the second degree, punishable as provided
28 in s. 775.082, s. 775.083, or s. 775.084, if the person traffics
29 in, attempts to traffic in, or possesses 5 to 14 counterfeit
30 credit cards or related documents.

31 (b) A felony of the second degree, punishable as provided
32 in s. 775.082, s. 775.083, or s. 775.084, if the person traffics
33 in, attempts to traffic in, or possesses 15 to 49 counterfeit
34 credit cards or related documents.

35 (c) A felony of the first degree, punishable as provided in
36 s. 775.082, s. 775.083, or s. 775.084, if the person traffics
37 in, attempts to traffic in, or possesses 50 or more counterfeit
38 credit cards or related documents.

39 Section 5. Paragraphs (e), (g), and (h) of subsection (3)
40 of section 921.0022, Florida Statutes, are amended to read:



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41 921.0022 Criminal Punishment Code; offense severity ranking
42 chart.—

43 (3) OFFENSE SEVERITY RANKING CHART

44 (e) LEVEL 5

45

Florida Statute	Felony Degree	Description
316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
<u>316.80(2)</u>	<u>2nd</u>	<u>Unlawful conveyance; obtaining fuel fraudulently.</u>
322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
327.30(5)	3rd	Vessel accidents involving personal

46

47

48

49

50



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51			injury; leaving scene.
	379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
52			
	379.3671 (2)(c)3.	3rd	Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.
53			
	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
54			
	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
55			
	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
56			
	440.381(2)	2nd	Submission of false, misleading, or



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57			incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
	624.401 (4) (b) 2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
58			
	626.902 (1) (c)	2nd	Representing an unauthorized insurer; repeat offender.
59			
	790.01 (2)	3rd	Carrying a concealed firearm.
60			
	790.162	2nd	Threat to throw or discharge destructive device.
61			
	790.163 (1)	2nd	False report of deadly explosive or weapon of mass destruction.
62			
	790.221 (1)	2nd	Possession of short-



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63			barreled shotgun or machine gun.
	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
64			
	796.05 (1)	2nd	Live on earnings of a prostitute; 1st offense.
65			
	800.04 (6) (c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
66			
	800.04 (7) (b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
67			
	806.111 (1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
68			
	812.0145 (2) (b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
69			



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70	812.015 (8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
71	812.019 (1)	2nd	Stolen property; dealing in or trafficking in.
72	812.131 (2) (b)	3rd	Robbery by sudden snatching.
73	812.16 (2)	3rd	Owning, operating, or conducting a chop shop.
74	817.034 (4) (a) 2.	2nd	Communications fraud, value \$20,000 to \$50,000.
75	817.234 (11) (b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
	817.2341 (1), (2) (a) & (3) (a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the



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76

817.611(2)(a)

2nd

solvency of an insuring
entity.

Traffic in or possess 5
to 14 counterfeit credit
cards or related
documents.

77

817.568(2)(b)

2nd

Fraudulent use of
personal identification
information; value of
benefit, services
received, payment
avoided, or amount of
injury or fraud, \$5,000
or more or use of
personal identification
information of 10 or
more persons.

78

817.625(2)(b)

2nd

Second or subsequent
fraudulent use of
scanning device or
reencoder.

79

825.1025(4)

3rd

Lewd or lascivious
exhibition in the
presence of an elderly
person or disabled



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80

827.071 (4) 2nd adult.
Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.

81

827.071 (5) 3rd Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.

82

839.13 (2) (b) 2nd Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.

83

843.01 3rd Resist officer with violence to person; resist arrest with violence.

84

847.0135 (5) (b) 2nd Lewd or lascivious exhibition using



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85			computer; offender 18 years or older.
847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.	
86			
847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.	
87			
874.05 (1) (b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.	
88			
874.05 (2) (a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.	
89			
893.13 (1) (a) 1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03 (1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4.	



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90

893.13(1)(c)2.

2nd

drugs).

Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.

91

893.13(1)(d)1.

1st

Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.

92

893.13(1)(e)2.

2nd

Sell, manufacture, or deliver cannabis or other drug prohibited



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			under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.
93	893.13(1)(f)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of public housing facility.
94	893.13(4)(b)	2nd	Deliver to minor cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
95	893.1351(1)	3rd	Ownership, lease, or



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rental for trafficking
in or manufacturing of
controlled substance.

96
97
98
99

(g) LEVEL 7

Florida
Statute

Felony
Degree

Description

100

316.027(2)(c)

1st

Accident involving death,
failure to stop; leaving
scene.

101

316.193(3)(c)2.

3rd

DUI resulting in serious
bodily injury.

102

316.1935(3)(b)

1st

Causing serious bodily
injury or death to another
person; driving at high
speed or with wanton
disregard for safety while
fleeing or attempting to
elude law enforcement
officer who is in a patrol
vehicle with siren and
lights activated.

103

327.35(3)(c)2.

3rd

Vessel BUI resulting in



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104			serious bodily injury.
	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
105			
	409.920 (2) (b) 1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
106			
	409.920 (2) (b) 1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
107			
	456.065(2)	3rd	Practicing a health care profession without a license.
108			
	456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
109			
	458.327(1)	3rd	Practicing medicine without a license.
110			
	459.013(1)	3rd	Practicing osteopathic



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111			medicine without a license.
	460.411 (1)	3rd	Practicing chiropractic medicine without a license.
112			
	461.012 (1)	3rd	Practicing podiatric medicine without a license.
113			
	462.17	3rd	Practicing naturopathy without a license.
114			
	463.015 (1)	3rd	Practicing optometry without a license.
115			
	464.016 (1)	3rd	Practicing nursing without a license.
116			
	465.015 (2)	3rd	Practicing pharmacy without a license.
117			
	466.026 (1)	3rd	Practicing dentistry or dental hygiene without a license.
118			
	467.201	3rd	Practicing midwifery without a license.



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119	468.366	3rd	Delivering respiratory care services without a license.
120	483.828 (1)	3rd	Practicing as clinical laboratory personnel without a license.
121	483.901 (9)	3rd	Practicing medical physics without a license.
122	484.013 (1) (c)	3rd	Preparing or dispensing optical devices without a prescription.
123	484.053	3rd	Dispensing hearing aids without a license.
124	494.0018 (2)	1st	Conviction of any violation of chapter 494 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
125	560.123 (8) (b) 1.	3rd	Failure to report currency or payment instruments



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126	560.125 (5) (a)	3rd	exceeding \$300 but less than \$20,000 by a money services business. Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
127	655.50 (10) (b) 1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
128	775.21 (10) (a)	3rd	Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations.
129	775.21 (10) (b)	3rd	Sexual predator working where children regularly congregate.
130	775.21 (10) (g)	3rd	Failure to report or providing false information about a sexual



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131	782.051 (3)	2nd	predator; harbor or conceal a sexual predator. Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
132	782.07 (1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
133	782.071	2nd	Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular homicide).
134	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
135	784.045 (1) (a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or



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136			disfigurement.
	784.045 (1) (a) 2.	2nd	Aggravated battery; using deadly weapon.
137			
	784.045 (1) (b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
138			
	784.048 (4)	3rd	Aggravated stalking; violation of injunction or court order.
139			
	784.048 (7)	3rd	Aggravated stalking; violation of court order.
140			
	784.07 (2) (d)	1st	Aggravated battery on law enforcement officer.
141			
	784.074 (1) (a)	1st	Aggravated battery on sexually violent predators facility staff.
142			
	784.08 (2) (a)	1st	Aggravated battery on a person 65 years of age or older.
143			
	784.081 (1)	1st	Aggravated battery on specified official or



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144			employee.
	784.082 (1)	1st	Aggravated battery by detained person on visitor or other detainee.
145			
	784.083 (1)	1st	Aggravated battery on code inspector.
146			
	787.06 (3) (a) 2.	1st	Human trafficking using coercion for labor and services of an adult.
147			
	787.06 (3) (e) 2.	1st	Human trafficking using coercion for labor and services by the transfer or transport of an adult from outside Florida to within the state.
148			
	790.07 (4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
149			
	790.16 (1)	1st	Discharge of a machine gun under specified circumstances.
150			



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151	790.165 (2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
152	790.165 (3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
153	790.166 (3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
154	790.166 (4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
155	790.23	1st, PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
	794.08 (4)	3rd	Female genital mutilation; consent by a parent,



156			guardian, or a person in custodial authority to a victim younger than 18 years of age.
157	796.05 (1)	1st	Live on earnings of a prostitute; 2nd offense.
158	796.05 (1)	1st	Live on earnings of a prostitute; 3rd and subsequent offense.
159	800.04 (5) (c) 1.	2nd	Lewd or lascivious molestation; victim younger than 12 years of age; offender younger than 18 years of age.
160	800.04 (5) (c) 2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years of age; offender 18 years of age or older.
	800.04 (5) (e)	1st	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years;



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161			offender 18 years or older; prior conviction for specified sex offense.
162	806.01 (2)	2nd	Maliciously damage structure by fire or explosive.
163	810.02 (3) (a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
164	810.02 (3) (b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
165	810.02 (3) (d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
166	810.02 (3) (e)	2nd	Burglary of authorized emergency vehicle.
	812.014 (2) (a) 1.	1st	Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property



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167			damage; 1st degree grand theft.
	812.014 (2) (b) 2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
168			
	812.014 (2) (b) 3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
169			
	812.014 (2) (b) 4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
170			
	812.0145 (2) (a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
171			
	812.019 (2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
172			
	812.131 (2) (a)	2nd	Robbery by sudden snatching.



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173	812.133 (2) (b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
174	817.034 (4) (a) 1.	1st	Communications fraud, value greater than \$50,000.
175	817.234 (8) (a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
176	817.234 (9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
177	817.234 (11) (c)	1st	Insurance fraud; property value \$100,000 or more.
178	817.2341 (2) (b) & (3) (b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.



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179	817.535 (2) (a)	3rd	Filing false lien or other unauthorized document.
180	<u>817.611 (2) (b)</u>	<u>2nd</u>	<u>Traffic in or possess 15 to 49 counterfeit credit cards or related documents.</u>
181	825.102 (3) (b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
182	825.103 (3) (b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$10,000 or more, but less than \$50,000.
183	827.03 (2) (b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
184	827.04 (3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or



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185			older.
	837.05 (2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
186			
	838.015	2nd	Bribery.
187			
	838.016	2nd	Unlawful compensation or reward for official behavior.
188			
	838.021 (3) (a)	2nd	Unlawful harm to a public servant.
189			
	838.22	2nd	Bid tampering.
190			
	843.0855 (2)	3rd	Impersonation of a public officer or employee.
191			
	843.0855 (3)	3rd	Unlawful simulation of legal process.
192			
	843.0855 (4)	3rd	Intimidation of a public officer or employee.
193			
	847.0135 (3)	3rd	Solicitation of a child, via a computer service, to



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194			commit an unlawful sex act.
	847.0135 (4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
195			
	872.06	2nd	Abuse of a dead human body.
196			
	874.05 (2) (b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
197			
	874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
198			
	893.13 (1) (c) 1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03 (1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4.) within 1,000 feet of a child care



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199			facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
	893.13 (1) (e) 1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4., within 1,000 feet of property used for religious services or a specified business site.
200			
	893.13 (4) (a)	1st	Deliver to minor cocaine (or other s. 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4. drugs).
201			
	893.135 (1) (a) 1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
202			
	893.135 (1) (b) 1.a.	1st	Trafficking in cocaine, more than 28 grams, less



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203			than 200 grams.
	893.135 (1) (c) 1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
204			
	893.135 (1) (c) 2.a.	1st	Trafficking in hydrocodone, 14 grams or more, less than 28 grams.
205			
	893.135 (1) (c) 2.b.	1st	Trafficking in hydrocodone, 28 grams or more, less than 50 grams.
206			
	893.135 (1) (c) 3.a.	1st	Trafficking in oxycodone, 7 grams or more, less than 14 grams.
207			
	893.135 (1) (c) 3.b.	1st	Trafficking in oxycodone, 14 grams or more, less than 25 grams.
208			
	893.135 (1) (d) 1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
209			
	893.135 (1) (e) 1.	1st	Trafficking in methaqualone, more than



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210			200 grams, less than 5 kilograms.
	893.135 (1) (f) 1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
211			
	893.135 (1) (g) 1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
212			
	893.135 (1) (h) 1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
213			
	893.135 (1) (j) 1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
214			
	893.135 (1) (k) 2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
215			
	893.1351 (2)	2nd	Possession of place for trafficking in or manufacturing of



216			controlled substance.
	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
217			
	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
218			
	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
219			
	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
220			
	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
221			



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222	943.0435 (13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
223	943.0435 (14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
224	944.607 (9)	3rd	Sexual offender; failure to comply with reporting requirements.
225	944.607 (10) (a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
226	944.607 (12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
	944.607 (13)	3rd	Sexual offender; failure to report and reregister;



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227			failure to respond to address verification; providing false registration information.
	985.4815 (10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
228			
	985.4815 (12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
229			
	985.4815 (13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
230			
231			
232	(h) LEVEL 8		
233			
	Florida	Felony	
	Statute	Degree	Description
234			
	316.193	2nd	DUI manslaughter.



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(3) (c) 3.a.

235

316.1935 (4) (b) 1st Aggravated fleeing or attempted eluding with serious bodily injury or death.

236

327.35 (3) (c) 3. 2nd Vessel BUI manslaughter.

237

499.0051 (7) 1st Knowing trafficking in contraband prescription drugs.

238

499.0051 (8) 1st Knowing forgery of prescription labels or prescription drug labels.

239

560.123 (8) (b) 2. 2nd Failure to report currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000 by money transmitter.

240

560.125 (5) (b) 2nd Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding



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241			\$20,000, but less than \$100,000.
	655.50 (10) (b) 2.	2nd	Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.
242			
	777.03 (2) (a)	1st	Accessory after the fact, capital felony.
243			
	782.04 (4)	2nd	Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aggravated fleeing or eluding with serious bodily injury or death, aircraft piracy, or unlawfully discharging bomb.
244			
	782.051 (2)	1st	Attempted felony murder while perpetrating or attempting to perpetrate



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245			a felony not enumerated in s. 782.04(3).
	782.071(1)(b)	1st	Committing vehicular homicide and failing to render aid or give information.
246			
	782.072(2)	1st	Committing vessel homicide and failing to render aid or give information.
247			
	787.06(3)(a)1.	1st	Human trafficking for labor and services of a child.
248			
	787.06(3)(b)	1st	Human trafficking using coercion for commercial sexual activity of an adult.
249			
	787.06(3)(c)2.	1st	Human trafficking using coercion for labor and services of an unauthorized alien adult.
250			
	787.06(3)(e)1.	1st	Human trafficking for labor and services by the



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251	787.06(3)(f)2.	1st	transfer or transport of a child from outside Florida to within the state. Human trafficking using coercion for commercial sexual activity by the transfer or transport of any adult from outside Florida to within the state.
252	790.161(3)	1st	Discharging a destructive device which results in bodily harm or property damage.
253	794.011(5)(a)	1st	Sexual battery; victim 12 years of age or older but younger than 18 years; offender 18 years or older; offender does not use physical force likely to cause serious injury.
254	794.011(5)(b)	2nd	Sexual battery; victim and offender 18 years of age or older; offender



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255			does not use physical force likely to cause serious injury.
	794.011 (5) (c)	2nd	Sexual battery; victim 12 years of age or older; offender younger than 18 years; offender does not use physical force likely to cause injury.
256			
	794.011 (5) (d)	1st	Sexual battery; victim 12 years of age or older; offender does not use physical force likely to cause serious injury; prior conviction for specified sex offense.
257			
	794.08 (3)	2nd	Female genital mutilation, removal of a victim younger than 18 years of age from this state.
258			
	800.04 (4) (b)	2nd	Lewd or lascivious battery.
259			
	800.04 (4) (c)	1st	Lewd or lascivious



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260	806.01 (1)	1st	battery; offender 18 years of age or older; prior conviction for specified sex offense. Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
261	810.02 (2) (a)	1st, PBL	Burglary with assault or battery.
262	810.02 (2) (b)	1st, PBL	Burglary; armed with explosives or dangerous weapon.
263	810.02 (2) (c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.
264	812.014 (2) (a) 2.	1st	Property stolen; cargo valued at \$50,000 or more, grand theft in 1st degree.
265			



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266	812.13 (2) (b)	1st	Robbery with a weapon.
267	812.135 (2) (c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
268	817.535 (2) (b)	2nd	Filing false lien or other unauthorized document; second or subsequent offense.
269	817.535 (3) (a)	2nd	Filing false lien or other unauthorized document; property owner is a public officer or employee.
270	817.535 (4) (a) 1.	2nd	Filing false lien or other unauthorized document; defendant is incarcerated or under supervision.
	817.535 (5) (a)	2nd	Filing false lien or other unauthorized document; owner of the property incurs financial loss as a result of the false instrument.



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271	817.568 (6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
272	<u>817.611 (2) (c)</u>	<u>1st</u>	<u>Traffic in or possess 50 or more counterfeit credit cards or related documents.</u>
273	825.102 (2)	1st	Aggravated abuse of an elderly person or disabled adult.
274	825.1025 (2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
275	825.103 (3) (a)	1st	Exploiting an elderly person or disabled adult and property is valued at \$50,000 or more.
276	837.02 (2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.



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277	837.021 (2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
278	860.121 (2) (c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
279	860.16	1st	Aircraft piracy.
280	893.13 (1) (b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1) (a) or (b).
281	893.13 (2) (b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1) (a) or (b).
282	893.13 (6) (c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1) (a) or (b).



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283	893.135 (1) (a) 2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
284	893.135 (1) (b) 1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
285	893.135 (1) (c) 1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
286	893.135 (1) (c) 2.c.	1st	Trafficking in hydrocodone, 50 grams or more, less than 200 grams.
287	893.135 (1) (c) 3.c.	1st	Trafficking in oxycodone, 25 grams or more, less than 100 grams.
288	893.135 (1) (d) 1.b.	1st	Trafficking in phencyclidine, more than 200 grams, less than 400 grams.
289	893.135	1st	Trafficking in



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290	(1) (e) 1.b.		methaqualone, more than 5 kilograms, less than 25 kilograms.
	893.135	1st	Trafficking in
	(1) (f) 1.b.		amphetamine, more than 28 grams, less than 200 grams.
291			
	893.135	1st	Trafficking in
	(1) (g) 1.b.		flunitrazepam, 14 grams or more, less than 28 grams.
292			
	893.135	1st	Trafficking in gamma-
	(1) (h) 1.b.		hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
293			
	893.135	1st	Trafficking in 1,4-
	(1) (j) 1.b.		Butanediol, 5 kilograms or more, less than 10 kilograms.
294			
	893.135	1st	Trafficking in
	(1) (k) 2.b.		Phenethylamines, 200 grams or more, less than 400 grams.



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295	893.1351 (3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
296	895.03 (1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
297	895.03 (2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
298	895.03 (3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
299	896.101 (5) (b)	2nd	Money laundering, financial transactions totaling or exceeding \$20,000, but less than \$100,000.
300			



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896.104(4)(a)2.	2nd	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding \$20,000 but less than \$100,000.
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301
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311

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

And the title is amended as follows:

Delete line 17

and insert:

noncompliant; defining terms; providing applicability;
amending s. 817.58, F.S.; revising the definition of
"traffic";

By the Committees on Fiscal Policy; and Criminal Justice; and
Senators Flores and Soto

594-03751-16

2016912c2

1 A bill to be entitled
2 An act relating to fraudulent activities associated
3 with payment systems; amending s. 316.80, F.S.;
4 revising the felony classification for unlawful
5 conveyance of fuel; amending s. 525.07, F.S.;
6 specifying requirements for managers of petroleum fuel
7 measuring devices with respect to accurate
8 measurement; requiring retail petroleum fuel measuring
9 devices fitted with scanning devices to have certain
10 security measures; providing requirements for such
11 measures; requiring the owner or operator of a device
12 to have certain security measures in place within a
13 specified timeframe upon notice from the Department of
14 Agriculture and Consumer Services; authorizing the
15 department, under certain circumstances, to prohibit
16 use of or to remove from service such devices that are
17 noncompliant; defining terms; providing applicability;
18 amending s. 817.611, F.S.; defining the term "related
19 document"; revising the prohibition against
20 trafficking in or possession of counterfeit credit
21 cards; revising penalties; amending s. 921.0022, F.S.;
22 revising the ranking of unlawful conveyance or
23 fraudulent acquisition of fuel on the offense severity
24 ranking chart; ranking trafficking in or possession of
25 counterfeit credit cards; providing an effective date.

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

28
29 Section 1. Subsection (2) of section 316.80, Florida
30 Statutes, is amended to read:

31 316.80 Unlawful conveyance of fuel; obtaining fuel

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32 fraudulently.-

33 (2) A ~~Any~~ person who violates subsection (1) commits a
34 felony of the ~~second~~ third degree, punishable as provided in s.
35 775.082, s. 775.083, or s. 775.084, if he or she has attempted
36 to or has fraudulently obtained motor or diesel fuel by:

37 (a) Presenting a credit card or a credit card account
38 number in violation of ss. 817.57-817.685;

39 (b) Using unauthorized access to any computer network in
40 violation of s. 815.06; or

41 (c) Using a fraudulently scanned or lost or stolen payment
42 access device, whether credit card or contactless device.

43 Section 2. Subsections (3) and (4) of section 525.07,
44 Florida Statutes, are amended, and subsection (10) is added to
45 that section, to read:

46 525.07 Powers and duties of department; inspections;
47 unlawful acts.-

48 (3) Each person who owns or manages ~~All persons who own or~~
49 ~~operate~~ a petroleum fuel measuring device shall be responsible
50 for ensuring accurate measure by the device within the
51 tolerances defined by the rule. An appropriate security seal
52 shall be placed on all measuring devices found to be giving
53 accurate measure within the tolerances defined by the department
54 in such a way that the metering adjustment cannot be changed
55 without breaking the seal.

56 (4) A ~~Any~~ measuring device that is found to be operating
57 outside the tolerances defined by the department shall be deemed
58 inaccurate and the department, at its discretion, shall either:

59 (a) Give, in writing, the ~~operator or owner~~ or manager of
60 the measuring device a reasonable time to repair the measuring

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61 device; or

62 (b) Condemn or prohibit the further use of the measuring
63 device by using an appropriate security seal to obstruct the
64 mechanism so that it cannot be operated without breaking the
65 seal. The measuring device shall not be operated in this state
66 again without the written consent of the department.

67 (10) (a) Each person who owns or manages a retail petroleum
68 fuel measuring device shall have affixed to or installed onto
69 the measuring device a security measure to restrict the
70 unauthorized access of customer payment card information. The
71 security measure must include one or more of the following:

72 1. The placement of pressure-sensitive security tape over
73 the panel opening that leads to the scanning device for the
74 retail petroleum fuel measuring device in a manner that will
75 restrict the unauthorized opening of the panel.

76 2. A device or system that will render the retail petroleum
77 fuel measuring device or the scanning device in the measuring
78 device inoperable if there is an unauthorized opening of the
79 panel.

80 3. A device or system that encrypts the customer payment
81 card information in the scanning device.

82 4. Another security measure approved by the department.

83 (b) The owner or manager of a retail petroleum fuel
84 measuring device without a security measure or with an altered
85 or damaged security measure, upon written notice from the
86 department of such noncompliance, shall have 5 calendar days to
87 comply with this subsection. After the fifth day of
88 noncompliance, the department may prohibit further use of the
89 retail petroleum fuel measuring device until a security measure

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90 is installed, replaced, or repaired. A repeat violation found on
91 the same retail petroleum fuel measuring device will be cause
92 for the department to immediately take the measuring device out
93 of service.

94 (c) For purposes of this subsection, the terms "scanning
95 device" and "payment card" have the same meanings as defined in
96 s. 817.625.

97 (d) This subsection applies only to retail petroleum fuel
98 measuring devices that have a scanning device.

99 Section 3. Section 817.611, Florida Statutes, is amended to
100 read:

101 817.611 Traffic in or possess counterfeit credit cards.-

102 (1) As used in this section, the term "related document"
103 means an invoice, a voucher, a sales draft, or other
104 representation or manifestation of a counterfeit credit card or
105 a credit card number of a cardholder if not authorized by the
106 cardholder.

107 (2) A ~~Any~~ person who traffics in, ~~or~~ attempts to traffic
108 in, or possesses ~~10 or more~~ counterfeit credit cards or related
109 documents, invoices, vouchers, sales drafts, or other
110 representations or manifestations of counterfeit credit cards,
111 or credit card account numbers of another in any 6-month period
112 is guilty of:

113 (a) A felony of the second degree, punishable as provided
114 in s. 775.082, s. 775.083, or s. 775.084, if the person traffics
115 in, attempts to traffic in, or possesses 5 to 14 counterfeit
116 credit cards or related documents.

117 (b) A felony of the first degree, punishable as provided in
118 s. 775.082, s. 775.083, or s. 775.084, if the person traffics

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119 in, attempts to traffic in, or possesses 15 to 49 counterfeit
 120 credit cards or related documents.

121 (c) A felony of the first degree, punishable as provided in
 122 s. 775.082, s. 775.083, or s. 775.084, if the person traffics
 123 in, attempts to traffic in, or possesses 50 or more counterfeit
 124 credit cards or related documents.

125 Section 4. Paragraphs (e), (g), and (i) of subsection (3)
 126 of section 921.0022, Florida Statutes, are amended to read:
 127 921.0022 Criminal Punishment Code; offense severity ranking
 128 chart.-

129 (3) OFFENSE SEVERITY RANKING CHART
 130 (e) LEVEL 5

Florida Statute	Felony Degree	Description
316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
<u>316.80(2)</u>	<u>2nd</u>	<u>Unlawful conveyance; obtaining fuel fraudulently.</u>

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322.34(6) 3rd Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.

327.30(5) 3rd Vessel accidents involving personal injury; leaving scene.

379.367(4) 3rd Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.

379.3671(2)(c)3. 3rd Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.

381.0041(11)(b) 3rd Donate blood, plasma, or organs knowing HIV positive.

440.10(1)(g) 2nd Failure to obtain workers' compensation coverage.

141	594-03751-16		2016912c2
	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
142	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
143	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
144	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
145	790.01(2)	3rd	Carrying a concealed firearm.
146	790.162	2nd	Threat to throw or

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	594-03751-16		2016912c2
			discharge destructive device.
147	790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
148	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
149	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
150	796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
151	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
152	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
153	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with

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	594-03751-16		2016912c2		intent to damage any structure or property.
154	812.0145(2)(b)	2nd			Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
155	812.015(8)	3rd			Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
156	812.019(1)	2nd			Stolen property; dealing in or trafficking in.
157	812.131(2)(b)	3rd			Robbery by sudden snatching.
158	812.16(2)	3rd			Owning, operating, or conducting a chop shop.
159	817.034(4)(a)2.	2nd			Communications fraud, value \$20,000 to \$50,000.
160	817.234(11)(b)	2nd			Insurance fraud; property value \$20,000 or more but less than

	594-03751-16		2016912c2		\$100,000.
161	817.2341(1), (2)(a) & (3)(a)	3rd			Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
162	<u>817.611(2)(a)</u>	<u>2nd</u>			<u>Traffic in or possess 5 to 14 counterfeit credit cards or related documents.</u>
163	817.568(2)(b)	2nd			Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more persons.
164	817.625(2)(b)	2nd			Second or subsequent

	594-03751-16		2016912c2	fraudulent use of scanning device or reencoder.
165	825.1025 (4)	3rd		Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
166	827.071 (4)	2nd		Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
167	827.071 (5)	3rd		Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
168	839.13 (2) (b)	2nd		Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.

	594-03751-16		2016912c2	
169	843.01	3rd		Resist officer with violence to person; resist arrest with violence.
170	847.0135 (5) (b)	2nd		Lewd or lascivious exhibition using computer; offender 18 years or older.
171	847.0137 (2) & (3)	3rd		Transmission of pornography by electronic device or equipment.
172	847.0138 (2) & (3)	3rd		Transmission of material harmful to minors to a minor by electronic device or equipment.
173	874.05 (1) (b)	2nd		Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
174	874.05 (2) (a)	2nd		Encouraging or recruiting person under

594-03751-16

2016912c2

13 years of age to join
a criminal gang.

175

893.13(1)(a)1.

2nd

Sell, manufacture, or
deliver cocaine (or
other s. 893.03(1)(a),
(1)(b), (1)(d), (2)(a),
(2)(b), or (2)(c)4.
drugs).

176

893.13(1)(c)2.

2nd

Sell, manufacture, or
deliver cannabis (or
other s. 893.03(1)(c),
(2)(c)1., (2)(c)2.,
(2)(c)3., (2)(c)5.,
(2)(c)6., (2)(c)7.,
(2)(c)8., (2)(c)9., (3),
or (4) drugs) within
1,000 feet of a child
care facility, school,
or state, county, or
municipal park or
publicly owned
recreational facility or
community center.

177

893.13(1)(d)1.

1st

Sell, manufacture, or
deliver cocaine (or
other s. 893.03(1)(a),

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(1)(b), (1)(d), (2)(a),
(2)(b), or (2)(c)4.
drugs) within 1,000 feet
of university.

178

893.13(1)(e)2.

2nd

Sell, manufacture, or
deliver cannabis or
other drug prohibited
under s. 893.03(1)(c),
(2)(c)1., (2)(c)2.,
(2)(c)3., (2)(c)5.,
(2)(c)6., (2)(c)7.,
(2)(c)8., (2)(c)9., (3),
or (4) within 1,000 feet
of property used for
religious services or a
specified business site.

179

893.13(1)(f)1.

1st

Sell, manufacture, or
deliver cocaine (or
other s. 893.03(1)(a),
(1)(b), (1)(d), or
(2)(a), (2)(b), or
(2)(c)4. drugs) within
1,000 feet of public
housing facility.

180

893.13(4)(b)

2nd

Deliver to minor
cannabis (or other s.

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893.03(1)(c), (2)(c)1.,
 (2)(c)2., (2)(c)3.,
 (2)(c)5., (2)(c)6.,
 (2)(c)7., (2)(c)8.,
 (2)(c)9., (3), or (4)
 drugs).

181

893.1351(1)

3rd

Ownership, lease, or
 rental for trafficking
 in or manufacturing of
 controlled substance.

182

183

184

(g) LEVEL 7

185

Florida
 Statute

Felony
 Degree

Description

186

316.027(2)(c)

1st

Accident involving death,
 failure to stop; leaving
 scene.

187

316.193(3)(c)2.

3rd

DUI resulting in serious
 bodily injury.

188

316.1935(3)(b)

1st

Causing serious bodily
 injury or death to another
 person; driving at high
 speed or with wanton

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disregard for safety while
 fleeing or attempting to
 elude law enforcement
 officer who is in a patrol
 vehicle with siren and
 lights activated.

189

327.35(3)(c)2.

3rd

Vessel BUI resulting in
 serious bodily injury.

190

402.319(2)

2nd

Misrepresentation and
 negligence or intentional
 act resulting in great
 bodily harm, permanent
 disfiguration, permanent
 disability, or death.

191

409.920
 (2)(b)1.a.

3rd

Medicaid provider fraud;
 \$10,000 or less.

192

409.920
 (2)(b)1.b.

2nd

Medicaid provider fraud;
 more than \$10,000, but
 less than \$50,000.

193

456.065(2)

3rd

Practicing a health care
 profession without a
 license.

194

456.065(2)

2nd

Practicing a health care

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			profession without a	
			license which results in	
195			serious bodily injury.	
	458.327(1)	3rd	Practicing medicine	
			without a license.	
196				
	459.013(1)	3rd	Practicing osteopathic	
			medicine without a	
			license.	
197				
	460.411(1)	3rd	Practicing chiropractic	
			medicine without a	
			license.	
198				
	461.012(1)	3rd	Practicing podiatric	
			medicine without a	
			license.	
199				
	462.17	3rd	Practicing naturopathy	
			without a license.	
200				
	463.015(1)	3rd	Practicing optometry	
			without a license.	
201				
	464.016(1)	3rd	Practicing nursing without	
			a license.	
202				
	465.015(2)	3rd	Practicing pharmacy	

	594-03751-16		2016912c2	
			without a license.	
203				
	466.026(1)	3rd	Practicing dentistry or	
			dental hygiene without a	
			license.	
204				
	467.201	3rd	Practicing midwifery	
			without a license.	
205				
	468.366	3rd	Delivering respiratory	
			care services without a	
			license.	
206				
	483.828(1)	3rd	Practicing as clinical	
			laboratory personnel	
			without a license.	
207				
	483.901(9)	3rd	Practicing medical physics	
			without a license.	
208				
	484.013(1)(c)	3rd	Preparing or dispensing	
			optical devices without a	
			prescription.	
209				
	484.053	3rd	Dispensing hearing aids	
			without a license.	
210				
	494.0018(2)	1st	Conviction of any	
			violation of chapter 494	

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			in which the total money	
			and property unlawfully	
			obtained exceeded \$50,000	
			and there were five or	
			more victims.	
211	560.123(8)(b)1.	3rd	Failure to report currency	
			or payment instruments	
			exceeding \$300 but less	
			than \$20,000 by a money	
			services business.	
212	560.125(5)(a)	3rd	Money services business by	
			unauthorized person,	
			currency or payment	
			instruments exceeding \$300	
			but less than \$20,000.	
213	655.50(10)(b)1.	3rd	Failure to report	
			financial transactions	
			exceeding \$300 but less	
			than \$20,000 by financial	
			institution.	
214	775.21(10)(a)	3rd	Sexual predator; failure	
			to register; failure to	
			renew driver license or	
			identification card; other	
			registration violations.	

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215	775.21(10)(b)	3rd	Sexual predator working	
			where children regularly	
			congregate.	
216	775.21(10)(g)	3rd	Failure to report or	
			providing false	
			information about a sexual	
			predator; harbor or	
			conceal a sexual predator.	
217	782.051(3)	2nd	Attempted felony murder of	
			a person by a person other	
			than the perpetrator or	
			the perpetrator of an	
			attempted felony.	
218	782.07(1)	2nd	Killing of a human being	
			by the act, procurement,	
			or culpable negligence of	
			another (manslaughter).	
219	782.071	2nd	Killing of a human being	
			or unborn child by the	
			operation of a motor	
			vehicle in a reckless	
			manner (vehicular	
			homicide).	
220				

	594-03751-16		2016912c2
	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
221	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
222	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
223	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
224	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
225	784.048(7)	3rd	Aggravated stalking; violation of court order.
226	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
227	784.074(1)(a)	1st	Aggravated battery on sexually violent predators

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			facility staff.
228	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
229	784.081(1)	1st	Aggravated battery on specified official or employee.
230	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
231	784.083(1)	1st	Aggravated battery on code inspector.
232	787.06(3)(a)2.	1st	Human trafficking using coercion for labor and services of an adult.
233	787.06(3)(e)2.	1st	Human trafficking using coercion for labor and services by the transfer or transport of an adult from outside Florida to within the state.
234	790.07(4)	1st	Specified weapons

	594-03751-16		2016912c2	violation subsequent to previous conviction of s. 790.07(1) or (2).
235	790.16(1)	1st		Discharge of a machine gun under specified circumstances.
236	790.165(2)	2nd		Manufacture, sell, possess, or deliver hoax bomb.
237	790.165(3)	2nd		Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
238	790.166(3)	2nd		Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
239	790.166(4)	2nd		Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.

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240	790.23	1st, PBL		Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
241	794.08(4)	3rd		Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
242	796.05(1)	1st		Live on earnings of a prostitute; 2nd offense.
243	796.05(1)	1st		Live on earnings of a prostitute; 3rd and subsequent offense.
244	800.04(5)(c)1.	2nd		Lewd or lascivious molestation; victim younger than 12 years of age; offender younger than 18 years of age.
245	800.04(5)(c)2.	2nd		Lewd or lascivious molestation; victim 12 years of age or older but

	594-03751-16		2016912c2	younger than 16 years of age; offender 18 years of age or older.
246	800.04(5)(e)	1st		Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years; offender 18 years or older; prior conviction for specified sex offense.
247	806.01(2)	2nd		Maliciously damage structure by fire or explosive.
248	810.02(3)(a)	2nd		Burglary of occupied dwelling; unarmed; no assault or battery.
249	810.02(3)(b)	2nd		Burglary of unoccupied dwelling; unarmed; no assault or battery.
250	810.02(3)(d)	2nd		Burglary of occupied conveyance; unarmed; no assault or battery.
251	810.02(3)(e)	2nd		Burglary of authorized

	594-03751-16		2016912c2	emergency vehicle.
252	812.014(2)(a)1.	1st		Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
253	812.014(2)(b)2.	2nd		Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
254	812.014(2)(b)3.	2nd		Property stolen, emergency medical equipment; 2nd degree grand theft.
255	812.014(2)(b)4.	2nd		Property stolen, law enforcement equipment from authorized emergency vehicle.
256	812.0145(2)(a)	1st		Theft from person 65 years of age or older; \$50,000 or more.
257				

	594-03751-16		2016912c2
	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
258			
	812.131(2)(a)	2nd	Robbery by sudden snatching.
259			
	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
260			
	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
261			
	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
262			
	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
263			
	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
264			

	594-03751-16		2016912c2
	817.2341	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
	(2)(b) & (3)(b)		
265			
	817.535(2)(a)	3rd	Filing false lien or other unauthorized document.
266			
	<u>817.611(2)(b)</u>	<u>1st</u>	<u>Traffic in or possess 15 to 49 counterfeit credit cards or related documents.</u>
267			
	825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
268			
	825.103(3)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$10,000 or more, but less than \$50,000.
269			

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	827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
270	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
271	837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
272	838.015	2nd	Bribery.
273	838.016	2nd	Unlawful compensation or reward for official behavior.
274	838.021(3)(a)	2nd	Unlawful harm to a public servant.
275	838.22	2nd	Bid tampering.
276	843.0855(2)	3rd	Impersonation of a public officer or employee.
277			

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	843.0855(3)	3rd	Unlawful simulation of legal process.
278	843.0855(4)	3rd	Intimidation of a public officer or employee.
279	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
280	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
281	872.06	2nd	Abuse of a dead human body.
282	874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
283	874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.

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284 893.13(1)(c)1. 1st Sell, manufacture, or
deliver cocaine (or other
drug prohibited under s.
893.03(1)(a), (1)(b),
(1)(d), (2)(a), (2)(b), or
(2)(c)4.) within 1,000
feet of a child care
facility, school, or
state, county, or
municipal park or publicly
owned recreational
facility or community
center.

285 893.13(1)(e)1. 1st Sell, manufacture, or
deliver cocaine or other
drug prohibited under s.
893.03(1)(a), (1)(b),
(1)(d), (2)(a), (2)(b), or
(2)(c)4., within 1,000
feet of property used for
religious services or a
specified business site.

286 893.13(4)(a) 1st Deliver to minor cocaine
(or other s. 893.03(1)(a),
(1)(b), (1)(d), (2)(a),
(2)(b), or (2)(c)4.

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287 drugs).

893.135(1)(a)1. 1st Trafficking in cannabis,
more than 25 lbs., less
than 2,000 lbs.

288 893.135 1st Trafficking in cocaine,
(1)(b)1.a. more than 28 grams, less
than 200 grams.

289 893.135 1st Trafficking in illegal
(1)(c)1.a. drugs, more than 4 grams,
less than 14 grams.

290 893.135 1st Trafficking in
(1)(c)2.a. hydrocodone, 14 grams or
more, less than 28 grams.

291 893.135 1st Trafficking in
(1)(c)2.b. hydrocodone, 28 grams or
more, less than 50 grams.

292 893.135 1st Trafficking in oxycodone,
(1)(c)3.a. 7 grams or more, less than
14 grams.

293 893.135 1st Trafficking in oxycodone,
(1)(c)3.b. 14 grams or more, less
than 25 grams.

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294	893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.	
295	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.	
296	893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.	
297	893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.	
298	893.135 (1)(h)1.a.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.	
299	893.135 (1)(j)1.a.	1st	Trafficking in 1,4- Butanediol, 1 kilogram or more, less than 5 kilograms.	
300				

	594-03751-16		2016912c2	
	893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.	
301	893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.	
302	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.	
303	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.	
304	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.	
305	943.0435(8)	2nd	Sexual offender; remains in state after indicating	

	594-03751-16		2016912c2	intent to leave; failure to comply with reporting requirements.
306	943.0435 (9) (a)	3rd		Sexual offender; failure to comply with reporting requirements.
307	943.0435 (13)	3rd		Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
308	943.0435 (14)	3rd		Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
309	944.607 (9)	3rd		Sexual offender; failure to comply with reporting requirements.
310	944.607 (10) (a)	3rd		Sexual offender; failure to submit to the taking of a digitized photograph.
311				

	594-03751-16		2016912c2	
	944.607 (12)	3rd		Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
312	944.607 (13)	3rd		Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
313	985.4815 (10)	3rd		Sexual offender; failure to submit to the taking of a digitized photograph.
314	985.4815 (12)	3rd		Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
315	985.4815 (13)	3rd		Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.

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Florida Statute	Felony Degree	Description
(i) LEVEL 9		
316.193 (3) (c) 3.b.	1st	DUI manslaughter; failing to render aid or give information.
327.35 (3) (c) 3.b.	1st	BUI manslaughter; failing to render aid or give information.
409.920 (2) (b) 1.c.	1st	Medicaid provider fraud; \$50,000 or more.
499.0051 (9)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.
560.123 (8) (b) 3.	1st	Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter.

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325
326
327
328
329

560.125 (5) (c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding \$100,000.
655.50 (10) (b) 3.	1st	Failure to report financial transactions totaling or exceeding \$100,000 by financial institution.
775.0844	1st	Aggravated white collar crime.
782.04 (1)	1st	Attempt, conspire, or solicit to commit premeditated murder.
782.04 (3)	1st, PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, aggravated fleeing or eluding with serious bodily injury or death, and other specified felonies.

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330	782.051(1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).
331	782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled adult.
332	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
333	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit or facilitate commission of any felony.
334	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to interfere with performance of any governmental or political function.
335	787.02(3)(a)	1st,PBL	False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual

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	594-03751-16		2016912c2
			battery, or lewd or lascivious battery, molestation, conduct, or exhibition.
336	787.06(3)(c)1.	1st	Human trafficking for labor and services of an unauthorized alien child.
337	787.06(3)(d)	1st	Human trafficking using coercion for commercial sexual activity of an unauthorized adult alien.
338	787.06(3)(f)1.	1st,PBL	Human trafficking for commercial sexual activity by the transfer or transport of any child from outside Florida to within the state.
339	790.161	1st	Attempted capital destructive device offense.
340	790.166(2)	1st,PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.

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	594-03751-16		2016912c2
341	794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
342	794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
343	794.011(4)(a)	1st,PBL	Sexual battery, certain circumstances; victim 12 years of age or older but younger than 18 years; offender 18 years or older.
344	794.011(4)(b)	1st	Sexual battery, certain circumstances; victim and offender 18 years of age or older.
345	794.011(4)(c)	1st	Sexual battery, certain circumstances; victim 12 years of age or older; offender younger than 18 years.
346			

	594-03751-16		2016912c2
	794.011(4)(d)	1st,PBL	Sexual battery, certain circumstances; victim 12 years of age or older; prior conviction for specified sex offenses.
347	794.011(8)(b)	1st,PBL	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
348	794.08(2)	1st	Female genital mutilation; victim younger than 18 years of age.
349	800.04(5)(b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
350	812.13(2)(a)	1st,PBL	Robbery with firearm or other deadly weapon.
351	812.133(2)(a)	1st,PBL	Carjacking; firearm or other deadly weapon.
352	812.135(2)(b)	1st	Home-invasion robbery

	594-03751-16		2016912c2	
			with weapon.	
353	817.535(3)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; property owner is a public officer or employee.	
354	817.535(4)(a)2.	1st	Filing false claim or other unauthorized document; defendant is incarcerated or under supervision.	
355	817.535(5)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; owner of the property incurs financial loss as a result of the false instrument.	
356	817.568(7)	2nd, PBL	Fraudulent use of personal identification information of an individual under the age	

	594-03751-16		2016912c2	
			of 18 by his or her parent, legal guardian, or person exercising custodial authority.	
357	<u>817.611(2)(c)</u>	<u>1st</u>	<u>Traffic in or possess 50 or more counterfeit credit cards or related documents.</u>	
358	827.03(2)(a)	1st	Aggravated child abuse.	
359	847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.	
360	847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.	
361	859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent to kill or injure another person.	
362	893.135	1st	Attempted capital	

	594-03751-16		2016912c2	
			trafficking offense.	
363	893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.	
364	893.135 (1)(b)1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.	
365	893.135 (1)(c)1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.	
366	893.135 (1)(c)2.d.	1st	Trafficking in hydrocodone, 200 grams or more, less than 30 kilograms.	
367	893.135 (1)(c)3.d.	1st	Trafficking in oxycodone, 100 grams or more, less than 30 kilograms.	
368	893.135 (1)(d)1.c.	1st	Trafficking in phencyclidine, more than 400 grams.	
369	893.135 (1)(e)1.c.	1st	Trafficking in methaqualone, more than	

	594-03751-16		2016912c2	
			25 kilograms.	
370	893.135 (1)(f)1.c.	1st	Trafficking in amphetamine, more than 200 grams.	
371	893.135 (1)(h)1.c.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 10 kilograms or more.	
372	893.135 (1)(j)1.c.	1st	Trafficking in 1,4- Butanediol, 10 kilograms or more.	
373	893.135 (1)(k)2.c.	1st	Trafficking in Phenethylamines, 400 grams or more.	
374	896.101(5)(c)	1st	Money laundering, financial instruments totaling or exceeding \$100,000.	
375	896.104(4)(a)3.	1st	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or	

594-03751-16

2016912c2

exceeding \$100,000.

376

377

378

Section 5. This act shall take effect October 1, 2016.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/24/16
Meeting Date

SB 912
Bill Number (if applicable)

Topic Support for SB 912

Amendment Barcode (if applicable)

Name Scott Ross

Job Title Governmental Consultant

Address 101 E. College Ave Suite 502
Street

Phone 850-222-9075

Tallahassee FL 32301
City State Zip

Email SRoss@ccpcityconsult.com

Speaking: For Against Information

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

Representing League of Southeastern Credit Unions

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/27/16
Meeting Date

SB 0912
Bill Number (if applicable)

Topic FRAUDULENT ACTIVITIES ASSOCIATED WITH PAYMENT SYSTEMS Amendment Barcode (if applicable)

Name RICHARD FORTEN

Job Title SERGEANT VOLUSIA COUNTY SHERIFFS OFFICE

Address 101 EAST CANAL STREET
Street

Phone 386-423-3301

NEW SMYRNA FL 32168
City State Zip

Email RFORTEN@VCSO.US

Speaking: For Against Information

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

Representing FLORIDA SHERIFFS ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/24/16

Meeting Date

SB 912

Bill Number (if applicable)

Topic Fraudulent Activities Associated with Payment Systems Amendment Barcode (if applicable)

Name Jonathan Rees

Job Title Deputy Director, Legislative Affairs

Address 400 S. Monroe St.

Street

Tallahassee

City

FL

State

32399

Zip

Phone _____

Email _____

Speaking: For Against Information

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

Representing Florida Department of Agriculture and Consumer Services

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/24/16

Meeting Date

912

Bill Number (if applicable)

Topic FRAUD

Amendment Barcode (if applicable)

Name Tim Stanfield

Job Title

Address 101 N. Monroe St

Phone 813 4220

Tallahassee FL 32301

City State Zip

Email

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

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

Representing Florida Police Chiefs Assoc

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

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/24/16
Meeting Date

912
Bill Number (if applicable)

Topic Payment Systems

Amendment Barcode (if applicable)

Name Samantha Padgett

Job Title Vice President & General Counsel

Address 227 S. Adams St.

Phone 672-4082

Tallahassee, FL 32301
City State Zip

Email samantha@frf.org

Speaking: For Against Information

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

Representing Florida Petroleum Marketers & Convenience Store Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/24/2016

Meeting Date

Topic _____

Bill Number 912
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/24

Meeting Date

SB 912

Bill Number (if applicable)

Topic Payment Systems

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516. N. Adams St

Phone 850-227-7173

Street

Tallahassee

FL

32301

Email bbevis@aif.com

City

State

Zip

Speaking: For Against Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Fiscal Policy, *Chair*
Appropriations
Appropriations Subcommittee on Criminal and
Civil Justice
Ethics and Elections
Finance and Tax
Health Policy
Regulated Industries

SENATOR ANITERE FLORES

37th District

February 24th, 2016

The Honorable David Simmons
Chair of Rules
315 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Simpson:

Unfortunately, I will not be able to present SB 912 relating to the Fraudulent Payment Systems. I respectfully request that you allow my Legislative Aide, Tiffany Lorente, to present this bill on my behalf.

Please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Anitere Flores".

Anitere Flores

CC: John Phelps, Staff Director, Committee on Rules, 402 Senate Office Building

REPLY TO:

- 10691 North Kendall Drive, Suite 309, Miami, Florida 33176 (305) 270-6550
- 413 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5037

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 1104

INTRODUCER: Rules Committee; Banking and Insurance Committee; and Senator Flores

SUBJECT: Service of Process on Financial Institutions

DATE: February 25, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>McAloon</u>	<u>Cibula</u>	<u>JU</u>	<u>Favorable</u>
3.	<u>Billmeier</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1104 amends the procedures for service of process upon a financial institution. The bill allows a financial institution to designate a place or registered agent with the Department of State as the sole location or agent for service of process. The location or agent must be available to receive service of process between 9 a.m. and 5 p.m. on business days, excluding federal and Florida holidays.

If service upon a financial institution cannot be made at the designated central location, or the institution has not designated a registered agent, service may be made upon the officer, director, or business agent of the financial institution at its principal place of business or any other branch, office, or place of business in the state.

Service of process required or authorized to be made by the Office of Financial Regulation (OFR) may continue to be made through certified mail to any officer, director, or business agent of the financial institution at its principal place of business or any other branch, office, or place of business.

II. Present Situation:

Background

In Florida, the Office of Financial Regulation (OFR) is responsible for the regulation of financial institutions chartered and organized under Florida law.¹ The OFR does not regulate national banks or banks that are chartered and regulated in other states. However, states are permitted to regulate the activities of national banks where doing so does not significantly interfere with the national bank's or the national bank regulator's exercise of its powers.² State law will not be upheld if the state prescriptions significantly impair the exercise of authority of the national banks.³ In issuing an order or rule, OFR must consider the importance of maintaining a competitive dual system of financial institutions and whether such an order or rule is in the public interest.⁴

Service of process is the term for the delivery of a summons, writ, or subpoena to the opposing party in a lawsuit.⁵ Service of process generally does not significantly impair the exercise of the authority of national banks, and is not preempted by federal law.⁶ Therefore, state law regulations in regard to service of process upon financial institutions are generally valid. The Florida Statutes govern the manner in which service of process, notice, or demand may be made on a financial institution that transacts business in this state, whether state or nationally chartered.⁷

Process against any financial institution may be served through a number of means. Currently, process may be served by the following methods:

- Personal service on the president or vice president, or other head of the corporation. If the president or vice president is absent, on the cashier, treasurer, secretary, or general manager. If process is still unable to be served on the previous individuals, it may be served on any director; or on any officer or business agent residing in the state.⁸
- Constructive service by publication when personal service on the institution cannot be had.⁹
- Personal service on the chair of the board, the president, any vice president, the secretary, or the treasurer, or the registered agent of the corporation at the registered office of the corporation in this state; or service on any other address in this state that is the principal office of the corporation.¹⁰

¹ See section 20.121(3)(a)2, F.S.

² *Watters v. Wachovia Bank, N.A.*, 550 U.S. 1 (2007).

³ *Watters v. Wachovia Bank, N.A.*, 550 U.S. at 12 (citing *Barnett Bank of Marion Cty., N.A. v. Nelson*, 517 U.S. 25, 32-34 (1996) (holding federal law permitting national banks to sell insurance in small towns preempted state statute prohibiting banks from selling most types of insurance); *Franklin Nat. Bank of Franklin Square v. New York*, 347 U.S. 373, 377-79 (1954) (stating local restrictions preempted because they burdened exercise of national banks' incidental power to advertise).

⁴ Section 655.061, F.S.; 5 Fla. Jur 2d Banks and Lending Institutions s. 60.

⁵ Black's Law Dictionary (10th ed. 2014) (defining the term "service of process").

⁶ See 12 CFR 34.4(a)(1) (applying state law service of process to real estate loans).

⁷ See section 655.0201, F.S.

⁸ Section 48.081, F.S.

⁹ Section 49.011, F.S.

¹⁰ Section 607.0504, F.S.

Any financial institution is allowed, but is not required, to designate a registered agent as the financial institution's agent for service of process, notice, or demand required to be served on the financial institution.¹¹ If service cannot be made through a registered agent, service may be made to any officer, director, or business agent of the financial institution at its principal place of business or at any other branch, office, or place of business.

The previously mentioned methods are not the only means, nor necessarily the required means, of serving process on a financial institution.¹²

Insufficient Service of Process

In *Bank of America, N.A. v. Bornstein*, the Fourth District Court of Appeal found insufficient service of process upon a financial institution.¹³ In that case, the appellee sued and obtained a writ of garnishment on Bank of America. The process server served the writ of garnishment at a Bank of America branch in West Palm Beach on a branch teller who stated she was authorized to accept on behalf of the person to whom the process was directed.¹⁴ The Fourth DCA concluded service of process was insufficient because the process server served a bank teller, rather than an officer.¹⁵ To obtain personal jurisdiction over a corporate defendant, a return of process showing service on an inferior officer of a corporation must show that all superior officers designated in the statute were absent when service was attempted.¹⁶ Because appellee served an inferior officer of the financial institution, and did not show that all superior officers were absent when service was attempted, the court found that service of process had been insufficient.

III. Effect of Proposed Changes:

Section 1 creates s. 48.092, F.S., which states that service on a financial institution must be made in accordance with s. 655.0201, F.S.

Section 2 amends s. 655.0201, F.S., to allow a financial institution to designate a place or registered agent within this state as its sole location for service of process. The place or agent must be open or available to receive service on regular business days from at least 9 a.m. to 5 p.m. The revisions to s. 655.0201, F.S., eliminate the potential for serving a financial institution through constructive notice by publication.

If the financial institution has no registered agent, or service cannot be made at the designated location, service may be made to any officer, director, or business agent of the financial institution at its principal place of business or at any other branch, office, or place of business in this state.

¹¹ Section 655.0201, F.S.

¹² Section 655.0201(4), F.S.

¹³ *Bank of America, N.A. v. Bornstein*, 39 So.3d 500 (Fla. 4th DCA 2010).

¹⁴ *Bank of America*, 39 So.3d at 501.

¹⁵ *Bank of America*, 39 So.3d at 504.

¹⁶ *Bank of America*, 39 So.3d at 503 (quoting *Nat'l Safety Assocs., Inc. v. Allstate Ins. Co.*, 799 So.2d 316, 317 (Fla.2d DCA 2001); accord *Space Coast Credit Union v. The First, F.A.*, 467 So.2d 737, 739-40 (Fla. 5th DCA 1985)).

The bill allows the Office of Financial Regulation to serve process on a financial institution by serving any officer, director, or business agent at its principal place of business or any other branch, office, or place of business in Florida. OFR can continue to serve process via certified mail.

Section 3 states the bill takes effect January 1, 2017.

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:

As financial institutions are likely the recipients of a large volume of process relating to their customers, allowing a financial institution to specify one place or agent for service of process may help the institution manage and respond to the process in a timely manner.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates section 48.092 of the Florida Statutes.

The bill substantially amends section 655.0201 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Rules on February 24, 2016:

The CS/CS allows service of process upon a business agent at a financial institution's principal place of business or at any branch, office, or place of business in the state if the registered agent is not available or has not been appointed.

CS by Banking and Insurance on February 9, 2016:

- Removes provisions requiring the Department of Financial Services to create a website to list the locations for service of process on financial institutions.
- Adds provisions allowing a financial institution to designate a registered agent or location for service.
- Provides hours when the agent must be available or the location must be open to accept service.
- Allows financial institutions to designate with the Department of State a place or registered agent that is the sole location or agent or service of process.

- B. **Amendments:**

None.



727518

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/24/2016	.	
	.	
	.	
	.	

The Committee on Rules (Diaz de la Portilla) recommended the following:

Senate Amendment (with title amendment)

Delete line 63
and insert:
service may be made to any officer, director, or business agent
of the financial

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

And the title is amended as follows:

Delete lines 15 - 16



727518

11 and insert:
12 institution has no registered agent, if service cannot
13 be made at the sole location, and for service made by
14 the

By the Committee on Banking and Insurance; and Senator Flores

597-03220-16

20161104c1

A bill to be entitled

An act relating to service of process on financial institutions; creating s. 48.092, F.S.; requiring service on financial institutions to be made in accordance with s. 655.0201, F.S.; amending s. 655.0201, F.S.; revising applicability of provisions of law governing service of process on financial institutions; authorizing certain financial institutions to designate with the Department of State a place or registered agent within the state as the sole location or agent for service of process, notice, levy, or demand; providing that service of process, notice, levy, or demand may be made at specified time periods; providing exceptions if the financial institution has no registered agent, service cannot be made at the sole location, or for service made by the Office of Financial Regulation; providing an effective date.

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

Section 1. Section 48.092, Florida Statutes, is created to read:

48.092 Service on financial institutions.—Service on financial institutions must be made in accordance with s. 655.0201.

Section 2. Section 655.0201, Florida Statutes, is amended to read:

655.0201 Service of process, notice, levy, or demand on financial institutions.—

(1) Notwithstanding any other Florida law, this section establishes the proper location for service of process upon a

597-03220-16

20161104c1

~~financial institution for all types of service of process to be made on a financial institution. Process against any financial institution authorized by federal or state law to transact business in this state may be served in accordance with chapter 48, chapter 49, chapter 605, or part I of chapter 607, as appropriate.~~

(2) A Any financial institution authorized by federal or state law to transact business in this state may designate with the Department of State a place or registered agent located within the state as the financial institution's sole location or agent for service of process, notice, levy, or demand. Any such place or registered agent so designated must be open and available for service of process during regular business hours on regular business days, which, at a minimum, is any time between the hours of 9 a.m. and 5 p.m. local time, on Mondays through Fridays, excluding federal and Florida holidays. After a financial institution designates a place or registered agent within this state, such place or registered agent is the sole location for service of process, including service for actions related to garnishment, levy, injunctions, lawsuits, and the attachment of safety deposit boxes, in accordance with chapters 60, 76, and 77, and the Florida Rules of Civil Procedure required or permitted by law to be served on the financial institution. If the financial institution has no registered agent, or its registered agent cannot with reasonable diligence be served, service may be made to any executive officer of the financial institution at its principal place of business in this state.

(3) (a) If a financial institution has no registered agent

597-03220-16

20161104c1

62 or service cannot be made in accordance with subsection (2),
63 service may be made to any officer or director of the financial
64 institution at its principal place of business or at any other
65 branch, office, or place of business in the state.

66 (b) Notwithstanding subsection (2), any service required or
67 authorized to be made by the Office of Financial Regulation
68 under the financial institutions codes may be made to any
69 officer, director, or business agent of the financial
70 institution at its principal place of business or any other
71 branch, office, or place of business in the state as set forth
72 in s. 655.031(2) If service cannot be made in accordance with
73 subsection (2), service may be made to any officer, director, or
74 business agent of the financial institution at its principal
75 place of business or at any other branch, office, or place of
76 business in the state.

77 ~~(4) This section does not prescribe the only means, or~~
78 ~~necessarily the required means, of serving notice or demand on a~~
79 ~~financial institution.~~

80 Section 3. This act shall take effect January 1, 2017.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Fiscal Policy, *Chair*
Appropriations
Appropriations Subcommittee on Criminal and
Civil Justice
Ethics and Elections
Finance and Tax
Health Policy
Regulated Industries

SENATOR ANITERE FLORES

37th District

February 24, 2016

The Honorable David Simmons
Chair of the Committee on Rules
402 Senate Office Building
404 South Monroe Building
Tallahassee, FL 32399-1100

Dear Chair Simmons:

Unfortunately, I will not be able to present SB 1104 before you today. I humbly request that in my absence, my legislative aide, Will McRea present the bill.

Please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Anitere Flores".

Anitere Flores

CC: John Phelps, Staff Director, Committee on Rules, 402 Senate Office Building

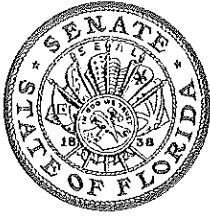
REPLY TO:

- 10691 North Kendall Drive, Suite 309, Miami, Florida 33176 (305) 270-6550
- 413 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5037

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



RECEIVED FEB 18 2016

The Florida Senate

Committee Agenda Request

To: Senator David Simmons, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 18, 2016

I respectfully request that **Senate Bill #1104**, relating to Service of Process, be placed on the:

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

Anitere Flores

Senator Anitere Flores
Florida Senate, District 37

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 1156

INTRODUCER: Community Affairs Committee and Senator Hutson

SUBJECT: Community Development Districts

DATE: February 23, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	Fav/CS
2.	Harmsen	McKay	CM	Favorable
3.	Present	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1156 revises the acreage size requirements that determine the track that a prospective Community Development District (CDD) must undertake as it seeks to become established. The bill also makes explicit that a CDD is empowered to contract with a towing operator to remove a vehicle or vessel from a CDD-owned facility or property. The bill also provides a new process for the merger of CDDs—permitting up to five CDDs to combine into one surviving CDD, providing the composition for the surviving CDD board of supervisors, and providing other requirements for merger.

II. Present Situation:

Community Development Districts

Community Development Districts are special-purpose units of local government established to help Florida development and growth “pay for itself” by providing infrastructure and services for new and existing communities when such infrastructure and services would not otherwise be available from other local, general-purpose governments like counties and municipalities.¹ CDDs serve as an alternative means of financing, constructing, acquiring, operating, and maintaining public infrastructure improvements to communities throughout Florida such as roads, utilities,

¹ Jere L. Earlywine and Katie S. Buchanan, *The Role of Community Development Districts In Florida*, Florida Environmental and Land Use Law Treatise 25.10-1 (2015).

hardscaping, landscaping, streetlights, stormwater infrastructure, conservation and mitigation areas, recreation facilities, and various other improvements allowed by statute.²

Creation of CDDs

There are two different tracks for the establishment of a CDD: one for CDDs with 1,000 acres or more, and one for CDDs with less than 1,000 acres. CDDs of 1,000 acres or more are reviewed at a state and local level and are established by administrative rule. Smaller CDDs of less than 1,000 acres are reviewed at a local level and established by ordinance, though local governments may refer a petition for a smaller CDD to the state for processing.

CDDs of 1,000 Acres or More in Size³

In order to establish a CDD of 1,000 acres or more, a petition must be filed with the Florida Land and Water Adjudicatory Commission (FLWAC). The FLWAC consists of the Governor and Cabinet, and is established under s. 380.07, F.S. The FLWAC's duties generally require it to act to implement statutory responsibilities to protect Florida's natural resources and environment. This includes review of issues regarding water management decisions, state land acquisition, Areas of Critical State Concern, and developments of regional impact, in addition to creation and dissolution of CDDs.⁴

An establishment petition must be filed with the FLWAC and contain all of the following:⁵

- A metes and bounds description of the external boundaries of the CDD;
- The written consent to the establishment of the CDD by all landowners whose real property is to be included in the CDD;
- A designation of five persons to be the initial members of the board of supervisors, who must serve in that office until replaced by elected members as provided in s. 190.006, F.S.;
- The proposed name of the CDD;
- A map of the proposed district showing current major trunk water mains and sewer inceptors and outfalls, if in existence;
- Based upon available data, the proposed timetable for construction of the district services and the estimated cost of constructing the proposed services;
- A designation of the future general distribution, location, and extent of public and private uses of land proposed for the area within the CDD; and
- A statement of estimated regulatory costs in accordance with the requirements of s. 120.541, F.S.

Before filing the petition, a petitioner must pay a \$15,000 filing fee to each of the municipalities or counties in which the CDD would be located.⁶ After the petition is filed, a local public hearing on the petition is conducted pursuant to the Administrative Procedure Act, ch. 120, F.S., in the

² *Id.*

³ Section 190.005, F.S.

⁴ Florida Land and Water Adjudicatory Commission, Statement of Agency Organization and Operation, (Dec. 2015) available at: <http://www.myflorida.com/myflorida/cabinet/flwac/flwac.pdf> (last visited Feb. 15, 2016).

⁵ Section 190.005(1)(a), F.S.

⁶ Section 190.005(1)(b), F.S.

county where the proposed CDD would be located.⁷ This hearing is conducted by an administrative law judge selected by the Division of Administrative Hearings (DOAH). The petitioner is required to publish notice of the hearing in a newspaper of paid general circulation for 4-consecutive weeks immediately before the hearing and the notice must identify the date, time, and location of the hearing and describe the area to be included in the CDD, along with other applicable information.⁸ All units of general-purpose local government which are affected and the general public must be given an opportunity to appear at the hearing and be given the ability to make oral or written comments on the petition.⁹ Furthermore, each affected county and municipality is authorized to conduct its own public hearing to recommend whether the petition should be granted or denied by the FLWAC, but the hearing must take place before the DOAH hearing and must be concluded within 45 days after the petition is filed.¹⁰ After such a hearing, the county or municipality may adopt a resolution expressing its support of, or objection to, the granting of the petition by the FLWAC.¹¹

The administrative law judge presiding over the DOAH hearing will prepare a report and recommendation to the FLWAC.¹² In determining whether to grant or deny an establishment petition, the FLWAC is required to consider the entire record from the local DOAH hearing, the transcript from the hearing, any resolutions adopted by counties or municipalities addressing the petition, and must ultimately make a determination after considering each of the factors set forth in s. 190.005(1)(e), F.S.

CDDs Less Than 1,000 Acres in Size

For a CDD less than 1,000 acres in size, the petition is filed with the county or municipality in which the CDD would be located and must contain the same information as a petition filed with the FLWAC.¹³ However, municipalities and counties may impose additional petition requirements through policymaking or ordinance. Some municipalities and counties have also set their own filing fees, which are generally due at the time of filing.¹⁴

Petitions to establish a CDD less than 1,000 acres in size are processed similarly to the FLWAC petitions with a few exceptions. The petition must contain the same elements as a FLWAC petition, but the petition is submitted to the municipality or county in which the proposed CDD would be located rather than the FLWAC.¹⁵ Furthermore, instead of a DOAH hearing, the municipality or county must conduct its own public hearing using the same requirements and procedures—i.e., the hearing must be held in the municipality or county in which the CDD would be located, must be noticed for 4-consecutive weeks in a newspaper of general circulation, and must allow all affected units of general-purpose local government and the general public an opportunity to appear at the hearing and present oral or written comments.¹⁶ As is the case with

⁷ Section 190.005(1)(d), F.S.

⁸ *Id.*

⁹ *Id.*

¹⁰ Section 190.005(1)(c), F.S.

¹¹ *Id.*

¹² Section 190.005(1)(d), F.S.; Section 120.57(k), F.S.

¹³ Section 190.005(2), F.S.

¹⁴ *Earlywine and Buchanan, supra* note 1, at 25.10-5.

¹⁵ Section 190.005(2), F.S.

¹⁶ Section 190.005(2)(b), F.S.

the FLWAC, the municipality or county commission must consider the entire record of the public hearing and the factors set forth in s. 190.005(1)(e), F.S., to determine whether to grant the petition.¹⁷ Any ordinance adopted by a municipality or county establishing a CDD may only contain those matters permitted to be included in a FLWAC rule as set forth in s. 190.005(1)(f), F.S., unless the county or municipality consents to any of the optional powers under s. 190.012, F.S.¹⁸

Powers of the CDD

CDDs are local units of special-purpose government that have limited authority, subject to the powers and duties enumerated in ch. 190, F.S.¹⁹

The CDD's general powers²⁰ include:

- The power to sue and be sued;
- The ability to contract for specific services, pursuant to the public bidding requirements of s. 190.033, F.S.;
- The authority to adopt rules and orders pursuant to ch. 120, F.S., that describe the powers, duties, and functions of the district's officers; the conduct of the district's business; the maintenance of records; and the form of certificates that evidence tax liens and all of the CDD's other documents and records;
- The right to raise user charges or fees, subject to board approval, in instances in which the money is necessary for the conduct of the district's activities and services, to assess ad valorem taxes pursuant to ch. 190, F.S., and to levy special assessments pursuant to ch. 170, F.S.; and
- To cooperate with, or contract with, other governmental agencies, in connection with any of the powers, duties, or purposes authorized by ch. 190, F.S.

If a CDD wants any of the special powers enumerated in s. 190.012, F.S.,²¹ it must request such powers from the local general-purpose government within the jurisdiction of which they are to be exercised. The CDD's special powers²² include the powers to finance, construct, acquire, operate and maintain the following:

- Water management and control;
- Road and roadway improvements, such as street lights, landscaping, and placement of electric utility lines underground;
- Construction of parks and facilities for recreational, cultural, and educational uses;
- Fire prevention and control;
- School buildings and related structures and site improvements;
- Security, including, but not limited to, construction of guardhouses, fences and gates, electronic intrusion-detection systems, and patrol cars.

¹⁷ Section 190.005(2)(c), F.S.

¹⁸ Section 190.005(2)(d), F.S.

¹⁹ See, e.g., ss. 190.03(6), 190.011, and 190.012, F.S.

²⁰ Section 190.011, F.S.

²¹ Such powers include the ability to finance, construct, acquire, operate, and maintain parks and facilities for certain uses; fire prevention and control; school buildings and related structures; security; control and elimination of mosquitoes; and waste collection and disposal. Section 190.012(2), F.S.

²² Section 190.012, F.S.

Removal of Abandoned Property

Cities and municipalities may remove abandoned property, in accordance with their local codes and ordinances, pursuant to s. 705.1015, F.S. Private property owners, including condominiums and businesses, may have a vehicle or vessel towed from their property in accordance with s. 715.07, F.S., which requires notice of the applicable towing company in the location from which the vehicle was towed, storage of the towed vehicle within a specific radius of its towed location, and availability of the vehicle during regular business hours, or within 1 hour of request for retrieval. In addition, the towing company must give notice of the removed vehicle to municipal police or the sheriff within 30 minutes after removal.²³

Because ch. 190, F.S., does not specifically enumerate a power to tow abandoned vehicles, it is unclear whether CDDs currently have the ability to contract with a tow truck operator to remove vehicles from CDD-owned property.

Boundary Amendments

A CDD may amend its boundaries after it has been established. Section 190.046, F.S., governs this process. A boundary amendment petition must contain a metes and bounds description of the boundaries of the CDD, and a statement of estimated regulatory costs.²⁴ If the petitioner seeks to expand the CDD area, the petition must describe “the proposed timetable for construction of any district services to the area, the estimated cost of constructing the proposed services, and the designation of the future general distribution, location, and extent of public and private uses of land proposed for the area by the future land use plan element of the adopted local government local comprehensive plan.”²⁵ If the petitioner seeks to contract the CDD, the petition must describe “what services and facilities are currently provided by the district to the area being removed, and the designation of the future general distribution, location, and extent of public and private uses of land proposed for the area by the future land element of the adopted local government comprehensive plan.”²⁶ Generally, the boundary amendment petition must be filed with the entity that established the CDD.²⁷

If the FLWAC established the CDD, the boundary amendment petition must be filed with the FLWAC.²⁸ The petitioner must pay a filing fee of \$1,500 to the county if the CDD or the land to be added to or deleted from the CDD is located within an unincorporated area, or to the municipality if the CDD or the land to be added to or deleted from the CDD is located within an incorporated area, and to each municipality the boundaries of which are contiguous with or contain all or a portion of the land within or to be added to or deleted from the external boundaries of the CDD.²⁹

²³ Section 715.07(2)(a)2, F.S.

²⁴ Section 190.046(1)(a), F.S.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Section 190.046(1)(b) and (c), F.S.

²⁸ Section 190.046(1)(d), F.S.

²⁹ *Id.*

Each county and municipality has the opportunity to hold a public hearing as provided in s. 190.005(1)(c), F.S.³⁰ However, the public hearing shall be limited to consideration of the contents of the petition and whether the petition for amendment should be supported by the county or municipality. Within 45 days after the conclusion of the public hearing, the CDD board of supervisors must transmit to the FLWAC the full record of the local hearing, the transcript of the hearing, any resolutions adopted by the local general-purpose governments, and its recommendation stating whether to grant the petition for amendment.³¹ The FLWAC must then determine whether to grant the petition based on the criteria used for establishment of CDDs, as set forth in s. 190.005(1)(e), F.S.³²

For CDDs established by the FLWAC, a boundary amendment may not result in a cumulative net total greater than 10 percent of the land in the initial CDD and in no event greater than 250 acres on a cumulative net basis.³³ For a CDD established by a municipality or a county, a boundary amendment may not result in a cumulative net total greater than 50 percent of the land in the initial CDD and in no event greater than 500 acres on a cumulative net basis.³⁴ If the boundary amendment exceeds these criteria, the boundary amendment petition may still proceed but it is processed in accordance with s. 190.005, F.S., which has additional requirements including additional notice similar to that necessary for a new establishment. Any resulting administrative rule or ordinance may only amend the boundaries of the CDD; it does not result in the establishment of a new CDD or a change to the CDD election timeframes.³⁵

In all cases of a petition to amend the boundaries of a CDD, the filing of the petition by the CDD constitutes consent of the landowners within the amended CDD.³⁶ As a result, the only other consent necessary for a boundary amendment is the written consent of those landowners whose land is to be added to or removed from the CDD.³⁷

Merger of CDDs

A CDD may merge with other community development districts upon filing a petition for merger, which must include the elements set forth in s. 190.005(1), F.S., and which must be evaluated pursuant to the criteria set forth in s. 190.005(1)(e), F.S.³⁸ The petition must state whether a new district is to be established or whether one district must be the surviving district. The district may merge with any other special districts upon filing a petition of establishment of a CDD pursuant to s. 190.005, F.S. The government formed by a merger involving a CDD is required to assume all indebtedness of, and receive title to, all property owned by the preexisting special districts, and the rights of creditors and liens upon property are not impaired by such merger. Any claim existing or action or proceeding pending by or against any CDD that is a party to the merger must enter into a merger agreement and must provide for the proper allocation of the indebtedness and the manner in which such debt is retired. The approval of the

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Section 190.046(1)(e), F.S.

³⁴ *Id.*

³⁵ Section 190.005(1)(f), F.S.

³⁶ Section 190.005(1)(g), F.S.

³⁷ *Id.*

³⁸ Section 190.046(3), F.S.

merger agreement and the petition by the board of supervisors of the CDD constitutes consent of the landowners within the district.³⁹

III. Effect of Proposed Changes:

Section 1 amends s. 190.005, F.S., revising the criteria for determining which process a proposed CDD must undertake in order to become established. A CDD of 2,500 acres or more, rather than 1,000 acres or more, is now required to petition the FLWAC for the establishment of a CDD. On the other hand, CDDs with less than 2,500 acres will now petition the county or municipality in which the CDD would be located.

Section 2 amends s. 190.012, F.S., providing that a CDD is not prohibited from contracting with a towing operator to remove a vehicle or vessel from a district-owned facility or property. This is despite the provision in s. 190.012(2)(d), F.S., which requires prior consent from the local general-purpose government in order for a CDD to “have the power to plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain additional systems and facilities for...security.” When removing a vehicle or vessel from a CDD-owned facility or property, the CDD has the same authorization and is subject to the same notice and procedural requirements as provided in s. 715.07, F.S., for the owner or lessee of private property. The selection of a towing operator by a CDD is not subject to public bidding if the towing operator is included in an approved list of towing operators maintained by the local government that has jurisdiction over the CDD facility or property.

Section 3 amends s. 190.046, F.S., revising the process for amending CDD boundaries. For CDDs established by the FLWAC, the limitation on boundary amendments is raised from a maximum cumulative net total no greater than 10 percent of the initial land and no greater than 250 acres on a cumulative net basis to no greater than 50 percent of the initial land and no greater than 1,000 acres on a cumulative net basis. For municipality- or county-established CDDs, the limitation is raised from no greater than 500 acres on a cumulative net basis of the initial land to no greater than 1,000 acres on a cumulative net basis. The 50 percent maximum in current law does not change for CDDs established by county or municipal ordinance.

The bill also provides that up to five CDDs whose boards of supervisors are composed entirely of qualified electors and established by the same local general-purpose government may merge into one surviving district through adoption of an ordinance by the local general-purpose government, regardless of the size of the surviving merged district. The filing of a petition by the majority of the members of each of the district board of supervisors seeking to merge constitutes consent of the landowners within each applicable district.

The merger agreement entered into between the district boards must meet the requirements in s. 190.046(3), F.S., and must also meet the following requirements:

- The surviving merged district board must consist of five elected board members.
- Each at-large board seat must represent the entire geographic area of the surviving merged district.

³⁹ *Id.*

- Each CDD that seeks to merge is entitled to a fair allocation of board membership to represent the districts being merged. To that end:
 - If two districts merge, two board members shall be elected from each of the districts and one board member shall be elected at-large.
 - If three districts merge, one board member shall be elected from each of the three districts and two board members shall be elected at-large.
 - If four districts merge, one board member shall be elected from each of the four districts and one board member shall be elected at-large.
 - If five districts merge, one board member shall be elected from each of the five districts.
- The election of district supervisors for the surviving merged district must be held at the next general election following the merger, at which time all terms of preexisting supervisors must end and the merger shall be legally in effect.
- Before filing a petition to merge by ordinance of the local general-purpose government, each district proposing to merge must hold a public hearing within its district for the purpose of providing information about and taking public comment on the proposed merger, merger agreement, and assignment of district supervisor seats on the surviving merged district board. Notice of the hearing must be published at least 14 days before the hearing. If, after the public hearing, a district board decides that it no longer wants to merge and cancels the merger agreement, the remaining districts must each hold another public hearing on the revised merger agreement. A petition to merge may not be filed for at least 30 days after the last public hearing held by the districts proposing to move.

Section 4 provides an effective date of July 1, 2016.

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 merger of CDDs may result in administrative cost savings which may be passed on to residents.

C. Government Sector Impact:

The FLWAC may see fewer applications for the establishment of a CDD, and counties and municipalities may see more applications, as CDDs between 1,000 and 2,499 acres will apply to the county or municipality in which it is to be located rather than the FLWAC.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 2 exempts CDDs that choose a towing operator from their local government's list of approved towing operators from public bidding requirements. It is unclear if this is an exemption from s. 190.033(3), F.S., which subjects contracts for maintenance services over \$195,000 for any CDD facility or project to competitive solicitation requirements, and exempts contracts for "other services" from competitive solicitation unless the CDD adopts a rule, policy, or procedure that states otherwise.

If "competitive solicitation" under s. 190.033, F.S., includes "public bidding," an exemption for towing services of abandoned vehicles from s. 190.033, F.S., may be unnecessary. It is unlikely that the towing permitted under the bill, if considered a maintenance contract, would result in costs in excess of \$195,000. If the towing services are considered "other services," then they are already exempt from 190.033, F.S., barring a CDD's rule, policy, or procedure stating otherwise.

Ultimately, the exemption as drafted may require CDDs to subject the selection of a towing operator who is not on a local government's list of approved towing operators to unspecified public bidding requirements.

VIII. Statutes Affected:

This bill substantially amends sections 190.005, 190.012, and 190.046 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 January 19, 2016:**

Restores the requirement in current law that a petitioner publish notice of the hearing for the establishment of a CDD in a newspaper of paid general circulation for 4 consecutive weeks immediately before the hearing. In addition, provisions regarding merger are conformed to HB 971 with the only substantive changes being the removal of a provision regarding the possibility of a second merger and the additional requirement that each at-large board seat after merger represent the entire geographic area of the surviving merged district.

B. Amendments:

None.

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

By the Committee on Community Affairs; and Senator Hutson

578-02304-16

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1 A bill to be entitled
 2 An act relating to community development districts;
 3 amending s. 190.005, F.S.; increasing minimum size
 4 requirements for the establishment of a community
 5 development district under certain circumstances;
 6 increasing maximum size requirements for the
 7 establishment of community development districts under
 8 certain circumstances; providing certain petition
 9 requirements if all of the land in the area for a
 10 proposed district is within the territorial
 11 jurisdiction of two or more counties; conforming a
 12 provision to changes made by the act; amending s.
 13 190.012, F.S.; providing that a district is not
 14 prohibited from contracting with a towing operator to
 15 remove vehicles or vessels from specified facilities
 16 or properties, subject to certain requirements;
 17 amending s. 190.046, F.S.; revising requirements
 18 related to the process of amending community
 19 development district boundaries; authorizing up to a
 20 certain number of districts to merge into one
 21 surviving district, subject to certain requirements;
 22 providing requirements of the merger agreement;
 23 providing for membership of the surviving merged
 24 district board; providing for public hearings subject
 25 to certain requirements; prohibiting a petition to
 26 merge from being filed within a specified timeframe;
 27 conforming cross-references; providing an effective
 28 date.

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

30 Section 1. Subsections (1) and (2) of section 190.005,
 31
 32

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33 Florida Statutes, are amended to read:

34 190.005 Establishment of district.—

35 (1) The exclusive and uniform method for the establishment
 36 of a community development district with a size of 2,500 ~~1,000~~
 37 acres or more shall be pursuant to a rule, adopted under chapter
 38 120 by the Florida Land and Water Adjudicatory Commission,
 39 granting a petition for the establishment of a community
 40 development district.

41 (a) A petition for the establishment of a community
 42 development district shall be filed by the petitioner with the
 43 Florida Land and Water Adjudicatory Commission. The petition
 44 shall contain:

45 1. A metes and bounds description of the external
 46 boundaries of the district. Any real property within the
 47 external boundaries of the district which is to be excluded from
 48 the district shall be specifically described, and the last known
 49 address of all owners of such real property shall be listed. The
 50 petition shall also address the impact of the proposed district
 51 on any real property within the external boundaries of the
 52 district which is to be excluded from the district.

53 2. The written consent to the establishment of the district
 54 by all landowners whose real property is to be included in the
 55 district or documentation demonstrating that the petitioner has
 56 control by deed, trust agreement, contract, or option of 100
 57 percent of the real property to be included in the district, and
 58 when real property to be included in the district is owned by a
 59 governmental entity and subject to a ground lease as described
 60 in s. 190.003(14), the written consent by such governmental
 61 entity.

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62 3. A designation of five persons to be the initial members
63 of the board of supervisors, who shall serve in that office
64 until replaced by elected members as provided in s. 190.006.

65 4. The proposed name of the district.

66 5. A map of the proposed district showing current major
67 trunk water mains and sewer interceptors and outfalls if in
68 existence.

69 6. Based upon available data, the proposed timetable for
70 construction of the district services and the estimated cost of
71 constructing the proposed services. These estimates shall be
72 submitted in good faith but are not binding and may be subject
73 to change.

74 7. A designation of the future general distribution,
75 location, and extent of public and private uses of land proposed
76 for the area within the district by the future land use plan
77 element of the effective local government comprehensive plan of
78 which all mandatory elements have been adopted by the applicable
79 general-purpose local government in compliance with the
80 Community Planning Act.

81 8. A statement of estimated regulatory costs in accordance
82 with the requirements of s. 120.541.

83 (b) ~~Before~~ Prior to filing the petition, the petitioner
84 shall:

85 1. Pay a filing fee of \$15,000 to the county, if located
86 within an unincorporated area, or to the municipality, if
87 located within an incorporated area, and to each municipality
88 the boundaries of which are contiguous with, or contain all or a
89 portion of the land within, the external boundaries of the
90 district.

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91 2. Submit a copy of the petition to the county, if located
92 within an unincorporated area, or to the municipality, if
93 located within an incorporated area, and to each municipality
94 the boundaries of which are contiguous with, or contain all or a
95 portion of, the land within the external boundaries of the
96 district.

97 3. If land to be included within a district is located
98 partially within the unincorporated area of one or more counties
99 and partially within a municipality or within two or more
100 municipalities, pay a \$15,000 filing fee to each entity.
101 Districts established across county boundaries shall be required
102 to maintain records, hold meetings and hearings, and publish
103 notices only in the county where the majority of the acreage
104 within the district lies.

105 (c) Such county and each such municipality required by law
106 to receive a petition may conduct a public hearing to consider
107 the relationship of the petition to the factors specified in
108 paragraph (e). The public hearing shall be concluded within 45
109 days after the date the petition is filed unless an extension of
110 time is requested by the petitioner and granted by the county or
111 municipality. The county or municipality holding such public
112 hearing may by resolution express its support of, or objection
113 to the granting of, the petition by the Florida Land and Water
114 Adjudicatory Commission. A resolution must base any objection to
115 the granting of the petition upon the factors specified in
116 paragraph (e). Such county or municipality may present its
117 resolution of support or objection at the Florida Land and Water
118 Adjudicatory Commission hearing and shall be afforded an
119 opportunity to present relevant information in support of its

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120 resolution.

121 (d) A local public hearing on the petition shall be
 122 conducted by a hearing officer in conformance with the
 123 applicable requirements and procedures of the Administrative
 124 Procedure Act. The hearing shall include oral and written
 125 comments on the petition pertinent to the factors specified in
 126 paragraph (e). The hearing shall be held at an accessible
 127 location in the county in which the community development
 128 district is to be located. The petitioner shall cause a notice
 129 of the hearing to be published in a newspaper at least once a
 130 week for the 4 successive weeks immediately before ~~prior to~~ the
 131 hearing. Such notice shall give the time and place for the
 132 hearing, a description of the area to be included in the
 133 district, which description shall include a map showing clearly
 134 the area to be covered by the district, and any other relevant
 135 information which the establishing governing bodies may require.
 136 The advertisement shall not be placed in that portion of the
 137 newspaper where legal notices and classified advertisements
 138 appear. The advertisement shall be published in a newspaper of
 139 general paid circulation in the county and of general interest
 140 and readership in the community, not one of limited subject
 141 matter, pursuant to chapter 50. If whenever possible, the
 142 advertisement shall appear in a newspaper that is published at
 143 least 5 days a week, unless the only newspaper in the community
 144 is published fewer than 5 days a week. In addition to being
 145 published in the newspaper, the map referenced above must be
 146 part of the online advertisement required pursuant to s.
 147 50.0211. All affected units of general-purpose local government
 148 and the general public shall be given an opportunity to appear

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149 at the hearing and present oral or written comments on the
 150 petition.

151 (e) The Florida Land and Water Adjudicatory Commission
 152 shall consider the entire record of the local hearing, the
 153 transcript of the hearing, resolutions adopted by local general-
 154 purpose governments as provided in paragraph (c), and the
 155 following factors and make a determination to grant or deny a
 156 petition for the establishment of a community development
 157 district:

158 1. Whether all statements contained within the petition
 159 have been found to be true and correct.

160 2. Whether the establishment of the district is
 161 inconsistent with any applicable element or portion of the state
 162 comprehensive plan or of the effective local government
 163 comprehensive plan.

164 3. Whether the area of land within the proposed district is
 165 of sufficient size, is sufficiently compact, and is sufficiently
 166 contiguous to be developable as one functional interrelated
 167 community.

168 4. Whether the district is the best alternative available
 169 for delivering community development services and facilities to
 170 the area that will be served by the district.

171 5. Whether the community development services and
 172 facilities of the district will be incompatible with the
 173 capacity and uses of existing local and regional community
 174 development services and facilities.

175 6. Whether the area that will be served by the district is
 176 amenable to separate special-district government.

177 (f) The Florida Land and Water Adjudicatory Commission

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178 shall not adopt any rule which would expand, modify, or delete
 179 any provision of the uniform community development district
 180 charter as set forth in ss. 190.006-190.041, except as provided
 181 in s. 190.012. A rule establishing a community development
 182 district shall only contain the following:

183 1. A metes and bounds description of the external
 184 boundaries of the district and any real property within the
 185 external boundaries of the district which is to be excluded.

186 2. The names of five persons designated to be the initial
 187 members of the board of supervisors.

188 3. The name of the district.

189 (g) The Florida Land and Water Adjudicatory Commission may
 190 adopt rules setting forth its procedures for considering
 191 petitions to establish, expand, modify, or delete uniform
 192 community development districts or portions thereof consistent
 193 with the provisions of this section.

194 (2) The exclusive and uniform method for the establishment
 195 of a community development district of less than 2,500 ~~1,000~~
 196 acres in size or a community development district of up to 7,000
 197 acres in size located within a connected-city corridor
 198 established pursuant to s. 163.3246(14) shall be pursuant to an
 199 ordinance adopted by the county commission of the county having
 200 jurisdiction over the majority of land in the area in which the
 201 district is to be located granting a petition for the
 202 establishment of a community development district as follows:

203 (a) A petition for the establishment of a community
 204 development district shall be filed by the petitioner with the
 205 county commission. The petition shall contain the same
 206 information as required in paragraph (1)(a).

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207 (b) A public hearing on the petition shall be conducted by
 208 the county commission in accordance with the requirements and
 209 procedures of paragraph (1)(d).

210 (c) The county commission shall consider the record of the
 211 public hearing and the factors set forth in paragraph (1)(e) in
 212 making its determination to grant or deny a petition for the
 213 establishment of a community development district.

214 (d) The county commission shall not adopt any ordinance
 215 which would expand, modify, or delete any provision of the
 216 uniform community development district charter as set forth in
 217 ss. 190.006-190.041. An ordinance establishing a community
 218 development district shall only include the matters provided for
 219 in paragraph (1)(f) unless the commission consents to any of the
 220 optional powers under s. 190.012(2) at the request of the
 221 petitioner.

222 (e) If all of the land in the area for the proposed
 223 district is within the territorial jurisdiction of a municipal
 224 corporation, then the petition requesting establishment of a
 225 community development district under this act shall be filed by
 226 the petitioner with that particular municipal corporation. In
 227 such event, the duties of the county, hereinabove described, in
 228 action upon the petition shall be the duties of the municipal
 229 corporation. If any of the land area of a proposed district is
 230 within the land area of a municipality, the county commission
 231 may not create the district without municipal approval. If all
 232 of the land in the area for the proposed district, even if less
 233 than 2,500 ~~1,000~~ acres, is within the territorial jurisdiction
 234 of two or more municipalities or two or more counties, except
 235 for proposed districts within a connected-city corridor

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236 established pursuant to s. 163.3246(14), the petition shall be
 237 filed with the Florida Land and Water Adjudicatory Commission
 238 and proceed in accordance with subsection (1).

239 (f) Notwithstanding any other provision of this subsection,
 240 within 90 days after a petition for the establishment of a
 241 community development district has been filed pursuant to this
 242 subsection, the governing body of the county or municipal
 243 corporation may transfer the petition to the Florida Land and
 244 Water Adjudicatory Commission, which shall make the
 245 determination to grant or deny the petition as provided in
 246 subsection (1). A county or municipal corporation does not ~~shall~~
 247 have the ~~ne~~ right or power to grant or deny a petition that has
 248 been transferred to the Florida Land and Water Adjudicatory
 249 Commission.

250 Section 2. Paragraph (d) of subsection (2) of section
 251 190.012, Florida Statutes, is amended to read:

252 190.012 Special powers; public improvements and community
 253 facilities.—The district shall have, and the board may exercise,
 254 subject to the regulatory jurisdiction and permitting authority
 255 of all applicable governmental bodies, agencies, and special
 256 districts having authority with respect to any area included
 257 therein, any or all of the following special powers relating to
 258 public improvements and community facilities authorized by this
 259 act:

260 (2) After the local general-purpose government within the
 261 jurisdiction of which a power specified in this subsection is to
 262 be exercised consents to the exercise of such power by the
 263 district, the district shall have the power to plan, establish,
 264 acquire, construct or reconstruct, enlarge or extend, equip,

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20161156c1

265 operate, and maintain additional systems and facilities for:

266 (d) Security, including, but not limited to, guardhouses,
 267 fences and gates, electronic intrusion-detection systems, and
 268 patrol cars, when authorized by proper governmental agencies;
 269 except that the district may not exercise any police power, but
 270 may contract with the appropriate local general-purpose
 271 government agencies for an increased level of such services
 272 within the district boundaries. This paragraph does not prohibit
 273 a district from contracting with a towing operator to remove a
 274 vehicle or vessel from a district-owned facility or property.
 275 When removing a vehicle or vessel from a district-owned facility
 276 or property, the district has the same authorization and is
 277 subject to the same notice and procedural requirements as the
 278 authorization and the notice and procedural requirements
 279 provided in s. 715.07 for an owner or lessee of private
 280 property. The district's selection of a towing operator is not
 281 subject to public bidding if the towing operator is included in
 282 an approved list of towing operators maintained by the local
 283 government that has jurisdiction over the district's facility or
 284 property.

285 Section 3. Paragraph (e) of subsection (1) and subsection
 286 (2) of section 190.046, Florida Statutes, are amended, present
 287 subsections (4) through (9) of that section are redesignated as
 288 subsections (5) through (10), respectively, and a new subsection
 289 (4) is added to that section, to read:

290 190.046 Termination, contraction, or expansion of
 291 district.—

292 (1) A landowner or the board may petition to contract or
 293 expand the boundaries of a community development district in the

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294 following manner:

295 (e)1. During the existence of a district initially
 296 established by administrative rule, the process to amend the
 297 boundaries of the district pursuant to paragraphs (a)-(d) shall
 298 not permit a cumulative net total greater than 50 ~~40~~ percent of
 299 the land in the initial district, and in no event greater than
 300 1,000 ~~250~~ acres on a cumulative net basis.

301 2. During the existence of a district initially established
 302 by county or municipal ordinance, the process to amend the
 303 boundaries of the district pursuant to paragraphs (a)-(d) shall
 304 not permit a cumulative net total greater than 50 percent of the
 305 land in the initial district, and in no event greater than 1,000
 306 ~~500~~ acres on a cumulative net basis.

307 (2) The district shall remain in existence unless:

308 (a) The district is merged with another district as
 309 provided in subsection (3) or subsection (4);

310 (b) All of the specific community development systems,
 311 facilities, and services that it is authorized to perform have
 312 been transferred to a general-purpose unit of local government
 313 in the manner provided in subsections ~~(4)~~, (5), (6), and (7)
 314 ~~(6)~~; or

315 (c) The district is dissolved as provided in ~~subsection~~
 316 ~~(7)~~, subsection (8), ~~or~~ subsection (9), or subsection (10).

317 (4)(a) To achieve economies of scale, reduce costs to
 318 affected district residents and businesses in areas with
 319 multiple existing districts, and encourage the merger of
 320 multiple districts, up to five districts that were established
 321 by the same local general-purpose government and whose board
 322 memberships are composed entirely of qualified electors may

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323 merge into one surviving district through adoption of an
 324 ordinance by the local general-purpose government,
 325 notwithstanding the acreage limitations otherwise set forth for
 326 the establishment of a district in this chapter. The filing of a
 327 petition by the majority of the members of each of the district
 328 board of supervisors seeking to merge constitutes consent of the
 329 landowners within each applicable district.

330 (b) In addition to meeting the requirements of subsection
 331 (3), a merger agreement entered into between the district boards
 332 subject to this subsection must also:

333 1. Require the surviving merged district board to consist
 334 of five elected board members.

335 2. Require each at-large board seat to represent the entire
 336 geographic area of the surviving merged district.

337 3. Ensure that each district to be merged is entitled to
 338 elect at least one board member from its former boundary.

339 4. Ensure a fair allocation of board membership to
 340 represent the districts being merged. To that end:

341 a. If two districts merge, two board members shall be
 342 elected from each of the districts and one board member shall be
 343 elected at-large.

344 b. If three districts merge, one board member shall be
 345 elected from each of the three districts and two board members
 346 shall be elected at-large.

347 c. If four districts merge, one board member shall be
 348 elected from each of the four districts and one board member
 349 shall be elected at-large.

350 d. If five districts merge, one board member shall be
 351 elected from each of the five districts.

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352 5. Require the election of board members for the surviving
353 merged district to be held at the next general election
354 following the merger, at which time all terms of preexisting
355 board members shall end and the merger shall be legally in
356 effect.

357 (c) Before filing the merger petition with the local
358 general-purpose government under this subsection, each district
359 proposing to merge must hold a public hearing within its
360 district to provide information about and take public comment on
361 the proposed merger, merger agreement, and assignment of board
362 seats. Notice of the hearing shall be published at least 14 days
363 before the hearing. If, after the public hearing, a district
364 board decides that it no longer wants to merge and cancels the
365 proposed merger agreement, the remaining districts shall each
366 hold another public hearing on the revised merger agreement. A
367 petition to merge may not be filed for at least 30 days after
368 the last public hearing held by the districts proposing to
369 merge.

370 Section 4. This act shall take effect July 1, 2016.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2.24.16

Meeting Date

1156

Bill Number (if applicable)

Topic Community Development Districts

Amendment Barcode (if applicable)

Name Cheryl Stuart

Job Title Attorney - Hopping Green Semis

Address 119 S Monroe Ste 300

Phone 222 7500

Street

Tallahassee FL 32301

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing Assoc. of Florida Community Developers

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



The Florida Senate

Committee Agenda Request

To: Senator David Simmons, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 18, 2016

I respectfully request that **Senate Bill #1156**, relating to Community Development Districts, be placed on the:

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

A handwritten signature in black ink that reads "Travis Hutson".

Senator Travis Hutson
Florida Senate, District 6

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: SJR 1424

INTRODUCER: Senator Bean

SUBJECT: Election of Secretary of State/Membership of Cabinet

DATE: February 23, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fox</u>	<u>Roberts</u>	<u>EE</u>	Favorable
2.	<u>Peacock</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	<u>Fox</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SJR 1424 makes the Secretary of State a statewide elected office as of the 2018 general election and makes the Secretary a member of the Florida Cabinet.

The joint resolution specifically directs the legislature to enact implementing legislation by January 8, 2019.

If passed by a three-fifths vote of each house of the Legislature, the proposal will be voted on at the general election in November 2016; sixty percent of those voting on the measure is required for approval.

II. Present Situation:

A joint resolution is the only authorized method by which the Legislature may propose amendments to the State Constitution. If passed, the proposed amendment would appear on a statewide ballot for voter approval or rejection. It must pass each house by a three-fifths vote of the membership. A joint resolution is also used for redistricting.¹

Changes to the Florida Constitution can be proposed by a joint resolution of the Legislature, constitutional revision commission, citizens' initiative process, or taxation and budget commission.² If the proposed amendment is approved by vote of at least sixty percent of the electors voting on the measure, it will become effective as an amendment on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment.³

¹ *The Florida Senate, Glossary*, <http://www.flsenate.gov/Reference/Glossary#resolution> (last visited February 11, 2016).

² FLA. CONST. art. XI.

³ FLA. CONST. art. XI, s. 5.

Secretary of State

The Secretary of State is the state's chief of elections, chief cultural officer and head of the Department of State.⁴ The Department consists of the Office of the Secretary and the Divisions of Administrative Services, Corporations, Cultural Affairs, Elections, Historical Resources, and Library and Information Services.

Since 2003, the position of Florida Secretary of State has been an *appointed, non-Cabinet* post.

Prior to that time, the Secretary was an *elected Cabinet* position — one of six serving members in addition to the Governor. The 2003 change was the result of a 1998 amendment to the Florida Constitution that restructured the Cabinet from 6 to 3 officers⁵ (plus the governor), as well as making other governmental operations changes⁶; the amendment was one of several proposed by the Constitution Revision Commission (“CRC”).

III. Effect of Proposed Changes:

SJR 1424 makes the Secretary of State a statewide elected office as of the 2018 general election and makes the Secretary a member of the Florida Cabinet. As such, the Secretary will be subject to the eight-year term limits applicable to other members of the Cabinet pursuant to Art. VI, section 4, of the Florida Constitution.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

⁴ See <http://dos.myflorida.com/about-the-department/> (last visited on February 11, 2016).

⁵ Florida's Attorney General, Chief Financial Officer, and the Commissioner of Agriculture.

⁶ Constitution Revision Commission Amendment 8 (1998), *Restructuring the State Cabinet* (available at Florida Secretary of State's web site at: <http://dos.elections.myflorida.com/initiatives/fulltext/pdf/11-4.pdf> (last accessed January 27, 2016)).

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Division of Elections is required to advertise the full text of proposed constitutional amendments in English and Spanish twice in a newspaper of general circulation in each county before the election in which the amendment shall be submitted to the electors. The Division is also required to provide each Supervisor of Elections with either booklets or posters displaying the full text of proposed amendments.

According to the Division, the cost to advertise constitutional amendments for the 2014 general election was \$135.97 per word. Using 2014 rates, the cost to advertise this amendment for the 2016 general election could be \$106,328.54 at a minimum.

VI. Technical Deficiencies:

None.

VII. Related Issues:

SJR 942 by Senator Garcia proposes to make the Commissioner of Education a member of the Florida Cabinet. If both joint resolutions pass and are approved by the electors, the Cabinet will expand from 3 to 5 statewide officers (plus the governor), one member shy of the total number prior to the CRC Cabinet changes that took effect in 2003.

VIII. Statutes Affected:

This joint resolution substantially amends Article IV of the Florida Constitution and creates an implementation schedule in Article XII.

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 Bean

4-00435A-16

20161424__

Senate Joint Resolution

A joint resolution proposing amendments to Sections 3 and 4 of Article IV and the creation of a new section in Article XII of the State Constitution to provide for the election of the Secretary of State and the inclusion of the secretary as a member of the Cabinet.

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

That the following amendments to Sections 3 and 4 of Article IV and the creation of a new section in Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE IV
EXECUTIVE

SECTION 3. Succession to office of governor; acting governor.-

(a) Upon vacancy in the office of governor, the lieutenant governor shall become governor. Further succession to the office of governor shall be prescribed by law. A successor shall serve for the remainder of the term.

(b) Upon impeachment of the governor and until completion of trial thereof, or during the governor's physical or mental incapacity, the lieutenant governor shall act as governor. Further succession as acting governor shall be prescribed by law. Incapacity to serve as governor may be determined by the supreme court upon due notice after docketing of a written suggestion thereof by four ~~three~~ cabinet members, and in such case restoration of capacity shall be similarly determined after docketing of written suggestion thereof by the governor, the

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20161424__

legislature or four ~~three~~ cabinet members. Incapacity to serve as governor may also be established by certificate filed with the custodian of state records by the governor declaring incapacity for physical reasons to serve as governor, and in such case restoration of capacity shall be similarly established.

SECTION 4. Cabinet.-

(a) There shall be a cabinet composed of an attorney general, a chief financial officer, ~~and~~ a commissioner of agriculture, and a secretary of state. In addition to the powers and duties specified herein, they shall exercise such powers and perform such duties as may be prescribed by law. In the event of a tie vote of the governor and cabinet, the side on which the governor voted shall be deemed to prevail.

(b) The attorney general shall be the chief state legal officer. There is created in the office of the attorney general the position of statewide prosecutor. The statewide prosecutor shall have concurrent jurisdiction with the state attorneys to prosecute violations of criminal laws occurring or having occurred, in two or more judicial circuits as part of a related transaction, or when any such offense is affecting or has affected two or more judicial circuits as provided by general law. The statewide prosecutor shall be appointed by the attorney general from not less than three persons nominated by the judicial nominating commission for the supreme court, or as otherwise provided by general law.

(c) The chief financial officer shall serve as the chief fiscal officer of the state, and shall settle and approve accounts against the state, and shall keep all state funds and

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20161424__

62 securities.

63 (d) The commissioner of agriculture shall have supervision
64 of matters pertaining to agriculture except as otherwise
65 provided by law.

66 (e) The secretary of state shall keep the records of the
67 official acts of the legislative and executive departments and
68 perform the functions conferred by this constitution upon the
69 custodian of state records.

70 (f)~~(e)~~ The governor as chair, the chief financial officer,
71 and the attorney general shall constitute the state board of
72 administration, which shall succeed to all the power, control,
73 and authority of the state board of administration established
74 pursuant to Article IX, Section 16 of the Constitution of 1885,
75 and which shall continue as a body at least for the life of
76 Article XII, Section 9(c).

77 (g)~~(f)~~ The governor as chair, the chief financial officer,
78 the attorney general, ~~and~~ the commissioner of agriculture, and
79 the secretary of state shall constitute the trustees of the
80 internal improvement trust fund and the land acquisition trust
81 fund as provided by law.

82 (h)~~(g)~~ The governor as chair, the chief financial officer,
83 the attorney general, ~~and~~ the commissioner of agriculture, and
84 the secretary of state shall constitute the agency head of the
85 Department of Law Enforcement.

ARTICLE XII

SCHEDULE

Cabinet reorganization.-

86
87
88
89 (a) The amendments to Sections 3 and 4 of Article IV
90 relating to election of the secretary of state and the inclusion

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4-00435A-16

20161424__

91 of the secretary as a member of the cabinet shall take effect
92 January 8, 2019, but shall govern with respect to the qualifying
93 for and the holding of the primary and general elections for the
94 office of the secretary of state in 2018.

95 (b) By January 8, 2019, the legislature shall enact
96 implementing legislation that includes any conforming changes to
97 the Florida Statutes necessitated by the reorganization of the
98 cabinet.

99 BE IT FURTHER RESOLVED that the following statement be
100 placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE IV, SECTIONS 3 AND 4

ARTICLE XII

104 ELECTION OF SECRETARY OF STATE; MEMBERSHIP OF CABINET.-
105 Proposing an amendment to the State Constitution to provide for
106 the statewide election of the Secretary of State, beginning with
107 the 2018 primary and general elections; revising membership of
108 the Cabinet to include the secretary; making technical revisions
109 necessary to conform the State Constitution to the revised
110 membership of the Cabinet; and requiring the Legislature to
111 enact implementing legislation. Under current law, the secretary
112 is appointed by and serves at the pleasure of the Governor.

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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 1432

INTRODUCER: Judiciary Committee and Senator Stargel

SUBJECT: Service of Process

DATE: February 23, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Brown</u>	<u>Phelps</u>	<u>RC</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1432 authorizes additional methods of service of process if personal service of process cannot be effected.

Under current law, a process server may personally serve process, such as a subpoena or summons, on a witness or opposing party in a lawsuit. In certain instances in which personal service of process is not possible, existing law authorizes substitute service of process, which is the service of the process on the intended recipient's spouse or person in charge of the recipient's business or private mailbox. If personal service or substitute service of process cannot be effected, existing law authorizes constructive service of process, which is usually accomplished by publishing a notice to the defendant in a newspaper.

This bill allows a process server to effect substitute service of process on the person in charge of the intended recipient's virtual office or executive office or mini-suite. A virtual office may be an office that provides communications services such as telephone or fax services, and address services without providing dedicated office space, provided that all communications are routed through a common receptionist. An executive office or mini-suite is similar, except that it includes dedicated office space.

II. Present Situation:

Service of Process and Process Servers

The role of a process server is to serve summons, subpoenas, and other forms of process in civil and criminal actions.¹ The term “to serve” means to make legal delivery of a notice or a pleading.² A summons is a writ or a process beginning a plaintiff’s legal action and requiring a defendant to appear in court to answer the summons.³ A subpoena is a legal writ or order commanding a person to appear before a court or other tribunal.⁴ A subpoena can command a person to be present for a deposition or for a court appearance.

The sheriff of the county where the person is to be served is generally responsible for serving as process server. However, notice of the initial nonenforceable civil process, criminal witness subpoenas, and criminal summons may be delivered by a process server other than the sheriff—a special process server or a certified process server. Special process servers and certified process servers must meet certain statutory qualifications and appear on a list approved and maintained by the sheriff or the chief judge of a judicial circuit.⁵

Types of Process

Personal Service of Process

A process server generally must effect service of process by personal service by:

- Serving the person directly or by leaving a copy of a complaint, petition, or initial pleading or paper at the person’s usual place of abode with a person who is 15 years old or older; or
- Serving a person at his or her place of employment in a private area designated by the employer.⁶

Substitute Service of Process

If a person cannot be personally served, a process server may accomplish substitute service of process by:

- Serving process on a spouse if the cause of action is not an adversarial proceeding between the spouse and the person to be served, if the spouse requests service, and if the spouse and person to be served live together; or
- Serving process on an employee or other person in charge of the intended recipient’s business if the intended recipient is a sole proprietor and two attempts have been made to serve him or her.⁷

¹ Sections 48.011 and 48.021, F.S. “... the common law writ of *capias ad respondum* was the historical precedent to contemporary service of process. ...the writ obtained in personam jurisdiction over the defendant, allowing the royal court to secure the appearance of the defendant by taking him into custody.” Troy Blair, *Receipt of a Complaint, Prior to or Unattended by Formal Service of Process, does not Trigger a Defendant’s Thirty-day Period to Remove a Case: Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc.*, 38 DUQ. L.REV. 663, 666 (Winter 2000).

² BLACK’S LAW DICTIONARY (10th ed. 2014).

³ BLACK’S LAW DICTIONARY (10th ed. 2014).

⁴ BLACK’S LAW DICTIONARY (10th ed. 2014).

⁵ Sections 48.021(1) and 48.29, F.S.

⁶ Section 48.031(1), F.S.

⁷ Section 48.031 (2), F.S.

Additionally, service of process of witness subpoenas may be accomplished through United States mail for the following cases:

- Criminal traffic case;
- Misdemeanor case;
- Second degree felony; or
- Third degree felony.⁸

To serve a subpoena on a witness by mail, the subpoena must be sent to the last known address of the witness at least 7 days before the appearance required in the subpoena. However, if a witness fails to appear in response to a subpoena served by mail, he or she may not be found in contempt of court.⁹

The final approved method of substitute service of process applies in instances in which the only address of person to be served is a private mailbox, discoverable through a public records search. If the process server confirms that the intended recipient maintains a mailbox at that location, the process server may leave a copy of the process with the person in charge of the private mailbox.¹⁰

Constructive Service of Process, including by Publication

Although the preferred methods of service of process are personal service or substitute service of process, another method is available. In instances in which these types of service of process may not be effected, constructive process is permitted in limited circumstances and actions. One type of constructive service of process is service by publication.

Service of process may be made by publication in certain legal actions, including:

- 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.
- 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.
- To partition real or personal property within the jurisdiction of the court.
- Dissolution or annulment of marriage.
- 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.
- To reestablish a lost instrument or record which has or should have its situs within the jurisdiction of the court.
- A writ of replevin, garnishment, or attachment that has been issued and executed.
- Certain parenting actions, including adoption, termination of parental rights, and to establish paternity in certain cases.

⁸ Section 48.031(3)(A), F.S.

⁹ Section 48.031(3)(A), F.S.

¹⁰ Section 48.031(6), F.S.

- An action in which personal service of process or notice is not required by the statutes or state constitution or by the Constitution of the United States.
- 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.¹¹

Service of process by publication may be effected upon any known or unknown person, corporation, or group that operates or does business in the state.¹²

If service of process is to be made by publication, the plaintiff or the plaintiff's attorney who requests service of process must first file a sworn statement as a condition precedent to the process being served through publication.¹³ What must be included in the sworn statement varies slightly, depending on the intended recipient. For example, the sworn statement on a service of process on a natural person must attest:

- That a diligent search and inquiry has been conducted to discover the name and address of the person served;
- To whether the person to be served is over or under the age of 18, or if age is unknown; and
- That the residence of the person is unknown, out-of-state or out-of-country, or in the state but that the person has either been absent from the state or concealed his or her whereabouts.¹⁴

III. Effect of Proposed Changes:

Current law authorizes process to be served through substitute service of process, such as to a private mailbox. This bill provides that a process server may also effect substitute service if the only address is for a virtual office, or an executive office or mini-suite. A virtual office may be an office that provides communication services such as telephone or fax services, and address services without providing dedicated office space, if all communications are routed through a common receptionist. An executive office or mini-suite includes a dedicated office space and other supportive services.

Once the process server confirms that the person to be served maintains a virtual office or mini-suite, the server may leave a copy at that location.

The bill takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹¹ Section 49.011, F.S.

¹² Section 49.021, F.S.

¹³ Section 49.031, F.S.

¹⁴ Section 49.041, F.S.

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:

A plaintiff may benefit by having a case heard in instances in which alternative service of process provided in the bill leads to the location of otherwise difficult to reach defendants.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 48.031 of the Florida Statutes.

IX. Additional Information:

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

CS by Judiciary on February 16, 2016:

The CS removes the authority for a type of constructive service of process, electronic service of process, from the bill.

B. Amendments:

None.



647180

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

The Committee on Rules (Negron) recommended the following:

Senate Amendment (with title amendment)

Between lines 34 and 35

insert:

Section 2. Paragraph (b) of subsection (1) of section 48.193, Florida Statutes, is amended to read:

48.193 Acts subjecting person to jurisdiction of courts of state.-

(1)

(b) Notwithstanding any other provision of this subsection, an order issued, or a penalty or fine imposed, by an agency of



647180

12 another ~~any other~~ state is ~~shall~~ not be enforceable against any
13 person or entity incorporated or having its principal place of
14 business in this state if the ~~where such~~ other state does not
15 provide a mandatory right of review of the ~~such~~ agency decision
16 in a state court of competent jurisdiction.

17
18 ===== T I T L E A M E N D M E N T =====

19 And the title is amended as follows:

20 Between lines 7 and 8

21 insert:

22 amending s. 48.193, F.S.; providing that orders issued
23 by agencies of other states are not enforceable in
24 certain circumstances;

By the Committee on Judiciary; and Senator Stargel

590-03684-16

20161432c1

1 A bill to be entitled
 2 An act relating to service of process; amending s.
 3 48.031, F.S.; expanding the locations at which
 4 substitute service of process may be made when such
 5 location is the only discoverable address for the
 6 person to be served; defining the terms "virtual
 7 office" and "executive office or mini suite";
 8 providing an effective date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Subsection (6) of section 48.031, Florida
 13 Statutes, is amended to read:

14 48.031 Service of process generally; service of witness
 15 subpoenas.—

16 (6) (a) If the only address for a person to be served, ~~which~~
 17 is discoverable through public records, ~~is a private mailbox, a~~
 18 virtual office, or an executive office or mini suite, substitute
 19 service may be made by leaving a copy of the process with the
 20 person in charge of the private mailbox, virtual office, or
 21 executive office or mini suite, but only if the process server
 22 determines that the person to be served maintains a mailbox, a
 23 virtual office, or an executive office or mini suite at that
 24 location.

25 (b) For purposes of this subsection, the term "virtual
 26 office" means an office that provides communications services,
 27 such as telephone or facsimile services, and address services
 28 without providing dedicated office space, and where all
 29 communications are routed through a common receptionist. The
 30 term "executive office or mini suite" means an office that
 31 provides communications services, such as telephone and
 32 facsimile services, a dedicated office space, and other

Page 1 of 2

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590-03684-16

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33 supportive services, and where all communications are routed
 34 through a common receptionist.

35 Section 2. This act shall take effect July 1, 2016.

Page 2 of 2

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

✓

COMMITTEES:
Higher Education, *Chair*
Appropriations Subcommittee on Education
Fiscal Policy
Judiciary
Military and Veterans Affairs, Space, and Domestic
Security
Regulated Industries

SENATOR KELLI STARGEL
15th District

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

February 18, 2016

The Honorable David Simmons
Senate Rules Committee, Chair
400 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Simmons:

I respectfully request that SB 1432, related to *Service of Process*, be placed on the committee agenda at your earliest convenience.

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

Sincerely,

A handwritten signature in black ink that reads "Kelli Stargel".

Kelli Stargel
State Senator, District 15

Cc: John Phelps/ Staff Director
Cissy DuBose/ AA

REPLY TO:

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Higher Education, *Chair*
Appropriations Subcommittee on Education
Fiscal Policy
Judiciary
Military and Veterans Affairs, Space, and Domestic
Security
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR KELLI STARGEL
15th District

February 22, 2016

Chairman Simmons

Dear Chair Simmons:

I am requesting permission for my LA, Chad Davis, to present SB 1432, which is dealing with Service of Process, at your committee meeting.

Thank you for this consideration,

Sincerely,

A handwritten signature in black ink that reads "Kelli Stargel".

Kelli Stargel
State Senator, District 15

Cc: John Phelps/ Staff Director
Cissy DuBose/ AA

REPLY TO:

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 7000

INTRODUCER: Rules Committee; Fiscal Policy Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); and Community Affairs Committee

SUBJECT: Growth Management

DATE: February 25, 2016 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Stearns	Yeatman		CA Submitted as Committee Bill
1.	Gusky	Miller	ATD	Recommend: Fav/CS
2.	Jones	Hrdlicka	FP	Fav/CS
3.	Cochran	Phelps	RC	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 7000 clarifies that certain proposed developments which are currently consistent with the local government comprehensive plan are not required to be reviewed pursuant to the State Coordinated Review Process for comprehensive plan amendments.

II. Present Situation:

Development of Regional Impact

A development of regional impact (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.” The DRI program was initially created in 1972 as an interim program intended to be replaced by comprehensive planning and permitting programs. The DRI program provided a lengthy and complicated review process for proposed projects that was largely duplicated by the successor comprehensive planning review process.

Comprehensive planning was first required by law in 1975. However, the Growth Management Act of 1985 is considered the watershed law that brought truly modern planning requirements into force. In recognition of this fact, the Environmental Land Management Study Committee in 1992

recommended that the DRI program be eliminated and relegated to an enhanced version of the Intergovernmental Coordination Element (ICE) that is required to be included in local comprehensive plans.¹ After much controversy, this recommendation was not implemented, and the DRI program continued in its previous form.

However, over the years, the program was amended to include a number of exemptions. The following list of exemptions is not exhaustive, but illustrates the number and variety of the exemptions from the DRI program that have been enacted:

- Certain projects that created at least 100 jobs that met certain qualifications – 1997.
- Certain expansions to port harbors, certain port transportation facilities, and certain intermodal transportation facilities – 1999.
- The thresholds used to identify projects subject to the program were increased by 150 percent for development in areas designated as rural areas of critical economic concern (now known as rural areas of opportunity) – 2001.
- Certain proposed facilities for the storage of any petroleum product or certain expansions of existing petroleum product storage facilities – 2002.
- Any renovation or redevelopment within the same land parcel which does not change land use or increase density or intensity of use – 2002.
- Certain waterport or marina developments – 2002.
- The establishment, relocation, or expansion of any military installation as defined in s. 163.3175, F.S. – 2005.

In 2009, the Legislature enacted the most significant exemption from the DRI program: the exemption for Dense Urban Land Areas (DULAs).² In 2015, 8 counties and 243 cities qualified as DULAs. This meant that all projects within those counties and cities were exempted from the DRI program. The areas qualifying as DULAs accounted for more than half of Florida's population.³

Comprehensive Plans and the Comprehensive Plan Amendment Process

The Growth Management Act of 1985 required every city and county to create and implement a comprehensive plan to guide future development.⁴ A locality's comprehensive plan lays out the locations for future public facilities, including roads, water and sewer facilities, neighborhoods, parks, schools, and commercial and industrial developments. Development that does not conform to the comprehensive plan may not be approved by a local government unless the local government amends its comprehensive plan first.

State law requires a proposed comprehensive plan amendment to receive three public hearings, the first held by the local planning board.⁵ The local commission (city or county) must then hold an

¹ 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.

² Chapter 2009-96, L.O.F.

³ Department of Economic Opportunity, Community Planning, Development, and Services, Community Planning, *Community Planning Table of Content: List of Local Governments Qualifying as Dense Urban Land Areas*, (June 11, 2015), available at <http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/list-of-local-governments-qualifying-as-dense-urban-land-areas> (last visited January 15, 2016).

⁴ Chapter 1985-55, L.O.F.

⁵ Section 163.3174(4)(a), F.S.

initial public hearing regarding the proposed amendment and subsequently transmit it to several statutorily identified reviewing agencies, including the Department of Economic Opportunity (DEO), the relevant Regional Planning Council (RPC), and adjacent local governments that request to participate in the review process.⁶

The state and regional agencies review the proposed amendment for impacts related to their statutory purview. The RPC reviews the amendment specifically for “extrajurisdictional impacts that would be inconsistent with the comprehensive plan of any affected local government within the region” as well as adverse effects on regional resources or facilities.⁷ Upon receipt of the reports from the various agencies, the local government holds a second public hearing at which the governing body votes to approve the amendment or not. If the amendment receives a favorable vote it is transmitted to the DEO for final review.⁸ The DEO then has either 31 days or 45 days (depending on the review process to which the amendment is subject) to determine whether the proposed comprehensive plan amendment is in compliance with all relevant agency rules and laws.⁹

The Expedited State Review Process vs. the State Coordinated Review Process

In 2011, the Florida Legislature bifurcated the process for approving comprehensive plan amendments.¹⁰ Most plan amendments were placed into the Expedited State Review Process, while plan amendments related to large-scale developments were placed into the State Coordinated Review Process. The two processes operate in much the same way, however, the State Coordinated Review Process provides a longer review period and requires all agency comments to be coordinated by the DEO, rather than communicated directly to the permitting local government by each individual reviewing agency.

2015 Changes to the DRI Law

In 2015, the Florida Legislature eliminated the requirement that new developments be reviewed pursuant to the DRI process. Instead, the Legislature directed that proposed developments only need to comply with the requirements of the State Coordinated Review Process.¹¹

However, there has been some confusion regarding whether the new statutory language requires new DRI-sized projects that comply with the existing comprehensive plan to nevertheless be reviewed pursuant to the State Coordinated Review Process and to obtain a plan amendment.

III. Effect of Proposed Changes:

Section 1 amends s. 163.3184, F.S., to remove an obsolete reference to “a development that qualifies as a development of regional impact.” In 2015, the Legislature eliminated the requirement that new developments be reviewed pursuant to the DRI process.

⁶ Section 163.3184, F.S.

⁷ Section 163.3184(3)(b)3.a., F.S.

⁸ Section 163.3184(3)(c) and (4)(e), F.S.

⁹ *Id.*

¹⁰ Chapter 2011-14, L.O.F. *See* s. 163.3184(3) and (4), F.S.

¹¹ Section 380.06(30), F.S. Chapter 2015-30, L.O.F.

Section 2 amends s. 380.06(30), F.S., to clarify that a proposed development that is consistent with the existing comprehensive plan is not required to undergo review pursuant to the State Coordinated Review Process for comprehensive plan amendments. The bill specifies that this subsection does not apply to amendments to a development order governing an existing development of regional impact.

Section 3 provides that the bill is effective on July 1, 2016.

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:

To the extent that developments are not subject to the State Coordinated Review Process, the regulatory compliance costs for those developments would be reduced for private sector developers. The bill has an indeterminate, but expected to be positive, fiscal impact to the private sector.

C. Government Sector Impact:

To the extent that developments are not subject to the State Coordinated Review Process, the regulatory compliance costs for review of those developments would be reduced for local and state governments. This portion of the bill has an indeterminate, but expected to be insignificant, positive fiscal impact to local and state governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 163.3184 and 380.06.

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

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

CS/CS by Rules on February 24, 2016:

Removes the sections regarding tax increment financing and annexation of enclaves from the bill.

CS by Fiscal Policy on January 20, 2016:

As recommended by the Appropriation Subcommittee on General Government, the CS adds language to s. 380.06(30), F.S., to specify that the provisions of that subsection do not apply to amendments to a development order governing an existing development of regional impact.

The CS also:

- Allows a governing body of a county to employ tax increment financing to fund economic development activities within the tax increment area; and
- Increases the acreage for the annexation of enclaves from 10 acres to 150 acres.

B. Amendments:

None.



925234

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/24/2016	.	
	.	
	.	
	.	

The Committee on Rules (Diaz de la Portilla) recommended the following:

Senate Amendment (with title amendment)

Delete lines 23 - 65

and insert:

Section 1. Paragraph (c) of subsection (2) of section 163.3184, Florida Statutes, is amended to read:

163.3184 Process for adoption of comprehensive plan or plan amendment.—

(2) COMPREHENSIVE PLANS AND PLAN AMENDMENTS.—

(c) Plan amendments that are in an area of critical state



925234

11 concern designated pursuant to s. 380.05; propose a rural land
12 stewardship area pursuant to s. 163.3248; propose a sector plan
13 pursuant to s. 163.3245 or an amendment to an adopted sector
14 plan; update a comprehensive plan based on an evaluation and
15 appraisal pursuant to s. 163.3191; propose a development that is
16 subject to the state coordinated review process ~~qualifies as a~~
17 ~~development of regional impact~~ pursuant to s. 380.06(30) ~~s.~~
18 ~~380.06~~; or are new plans for newly incorporated municipalities
19 adopted pursuant to s. 163.3167 shall follow the state
20 coordinated review process in subsection (4).

21
22 ===== T I T L E A M E N D M E N T =====

23 And the title is amended as follows:

24 Delete lines 2 - 14

25 and insert:

26 An act relating to growth management; amending s.
27 163.3184, F.S.; clarifying statutory language;
28 amending s. 380.06, F.S.;

By the Committees on Fiscal Policy; and Community Affairs

594-02378-16

20167000c1

1 A bill to be entitled
 2 An act relating to local development; amending s.
 3 125.045, F.S.; authorizing the governing body of a
 4 county to employ tax increment financing; specifying
 5 requirements for a tax increment; requiring the
 6 governing body of a county to administer a separate
 7 reserve account for tax increment areas for the
 8 deposit of tax increment revenues; requiring tax
 9 increment revenues be used to fund economic
 10 development activities within the tax increment area;
 11 amending s. 163.3184, F.S.; clarifying statutory
 12 language; amending s. 171.046, F.S.; increasing the
 13 size of an enclave that a municipality may annex under
 14 certain circumstances; amending s. 380.06, F.S.;
 15 providing that a proposed development that is
 16 consistent with certain comprehensive plans is not
 17 required to undergo review pursuant to the state
 18 coordinated review process; providing applicability;
 19 providing an effective date.

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

22
 23 Section 1. Subsection (6) is added to section 125.045,
 24 Florida Statutes, to read:
 25 125.045 County economic development powers.—
 26 (6) The governing body of a county may employ tax increment
 27 financing for the purposes of this section. The tax increment
 28 shall be determined annually and may not exceed 95 percent of
 29 the difference in ad valorem taxes as provided in s.
 30 163.387(1) (a). For any tax increment area created pursuant to
 31 this section, the governing body of a county shall administer a
 32 separate reserve account for the deposit of tax increment

Page 1 of 3

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33 revenues. Tax increment revenues, including the proceeds of any
 34 revenue bonds secured by, and repaid with, such tax increment
 35 revenues, shall be used exclusively to fund economic development
 36 activities within the tax increment area.

37 Section 2. Paragraph (c) of subsection (2) of section
 38 163.3184, Florida Statutes, is amended to read:
 39 163.3184 Process for adoption of comprehensive plan or plan
 40 amendment.—

41 (2) COMPREHENSIVE PLANS AND PLAN AMENDMENTS.—

42 (c) Plan amendments that are in an area of critical state
 43 concern designated pursuant to s. 380.05; propose a rural land
 44 stewardship area pursuant to s. 163.3248; propose a sector plan
 45 pursuant to s. 163.3245 or an amendment to an adopted sector
 46 plan; update a comprehensive plan based on an evaluation and
 47 appraisal pursuant to s. 163.3191; propose a development that is
 48 subject to the state coordinated review process ~~qualifies as a~~
 49 ~~development of regional impact pursuant to s. 380.06(30) or~~
 50 ~~380.06~~; or are new plans for newly incorporated municipalities
 51 adopted pursuant to s. 163.3167 shall follow the state
 52 coordinated review process in subsection (4).

53 Section 3. Subsection (2) of section 171.046, Florida
 54 Statutes, is amended to read:

55 171.046 Annexation of enclaves.—

56 (2) In order to expedite the annexation of enclaves of 150
 57 ~~40~~ acres or less into the most appropriate incorporated
 58 jurisdiction, based upon existing or proposed service provision
 59 arrangements, a municipality may:

60 (a) Annex an enclave by interlocal agreement with the
 61 county having jurisdiction of the enclave; or

Page 2 of 3

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62 (b) Annex an enclave with fewer than 25 registered voters
63 by municipal ordinance when the annexation is approved in a
64 referendum by at least 60 percent of the registered voters who
65 reside in the enclave.

66 Section 4. Subsection (30) of section 380.06, Florida
67 Statutes, is amended to read:

68 380.06 Developments of regional impact.—

69 (30) ~~NEW PROPOSED DEVELOPMENTS.—A new~~ proposed development
70 otherwise subject to the review requirements of this section
71 shall be approved by a local government pursuant to s.
72 163.3184(4) in lieu of proceeding in accordance with this
73 section. However, if the proposed development is consistent with
74 the comprehensive plan as provided in s. 163.3194(3)(b), the
75 development is not required to undergo review pursuant to s.
76 163.3184(4) or this section. This subsection does not apply to
77 amendments to a development order governing an existing
78 development of regional impact.

79 Section 5. This act shall take effect July 1, 2016.

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 7022

INTRODUCER: Criminal Justice Committee

SUBJECT: OGSR/Depictions or Recordings of the Killing of a Law Enforcement Officer

DATE: February 23, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Dugger</u>	<u>Cannon</u>		CJ Submitted as Committee Bill
1.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	Favorable
2.	<u>Dugger</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 7022 is the result of an Open Government Sunset Review of s. 406.136, F.S., performed by the Criminal Justice Committee. That section makes confidential and exempt from public disclosure photographs and video and audio recordings of the killing of a person when held by an agency. It permits a surviving spouse to view and copy these records. If there is no surviving spouse, then the deceased's surviving parents may view and copy them. If there are no surviving parents, then an adult child of the deceased may view and copy them. The surviving relative who has the authority to view and copy these records is authorized to designate in writing an agent to obtain them. Additionally, federal, state, and local governmental agencies, upon written request, may have access to these records in the performance of their duties and responsibilities. Other than these exceptions, the custodian is prohibited from releasing the records to any other person not authorized under the exemption without a court order.¹

This exemption is subject to review under the Open Government Sunset Review Act.² It will expire on October 2, 2016, unless the Legislature reviews and reenacts it.

The Criminal Justice Committee voted on February 1, 2016, to reenact the exemption but limit it to photographs and video and audio recordings held by an agency that depict or record the killing of a law enforcement officer who was acting in accordance with his or her official duties.³

Since the bill narrows the scope of the public records exemption, it does not require a two-thirds vote of each house of the Legislature for passage.

¹ Section 406.136, F.S.

² Section 119.15, F.S.

³ Committee members discussed and weighed heavily that the genesis for the exemption's creation was the killing of a police officer during a traffic stop in Tampa that was captured on the patrol car's video camera.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.⁴ This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities and any person acting on behalf of the government.⁵

In addition to the Florida Constitution, the Florida Statutes provides that the public may access legislative and executive branch records.⁶ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁷ The Public Records Act states that

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁸

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁹ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”¹⁰ A violation of the Public Records Act may result in civil or criminal liability.¹¹

The Legislature may create an exemption to public records requirements.¹² An exemption must pass by a two-thirds vote of the House and the Senate.¹³ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁴ A statutory

⁴ FLA. CONST., art. I, s. 24(a).

⁵ FLA. CONST., art. I, s. 24(a).

⁶ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

⁷ Public records laws are found throughout the Florida Statutes.

⁸ Section 119.01(1), F.S.

⁹ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” 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.”

¹⁰ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

¹¹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹² FLA. CONST., art. I, s. 24(c).

¹³ FLA. CONST., art. I, s. 24(c).

¹⁴ FLA. CONST., art. I, s. 24(c).

exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹⁵

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹⁶ Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian.¹⁷

Open Government Sunset Review Act

In addition to the constitutional requirements relating to the enactment of a public records exemption, the Legislature may subject the new or broadened exemption to the Open Government Sunset Review Act (OGSR).

The OGSR prescribes a legislative review process for newly created or substantially amended public records.¹⁸ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁹ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

Under the OGSR the purpose and necessity of reenacting the exemption are reviewed. The Legislature must consider the following questions during its review of an exemption:²⁰

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

¹⁵ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

¹⁶ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁷ A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

¹⁸ Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S. The OGSR process is currently being followed, however, the Legislature is not required to continue to do so. The Florida Supreme Court has found that one legislature cannot bind a future legislature. *Scott v. Williams*, 107 So. 3d 379 (Fla. 2013).

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(a), F.S.

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.²¹ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are not required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless otherwise provided for by law.²²

Current Exemption Under Review

In 2011, the Legislature created a public record exemption for photographs and video and audio recordings that depict or record the killing of a person when held by an agency.²³ These photographs and video and audio recordings are confidential and exempt from public records requirements, except that the exemption permits a surviving spouse to view, listen, and copy these photographs and video and audio recordings.²⁴ If there is no surviving spouse, then the deceased's surviving parents may view and copy them. If there are no surviving parents, then an adult child of the deceased may view and copy them.²⁵ The surviving relative who has the authority to view and copy these records is authorized to designate in writing an agent to obtain them.²⁶

Additionally, federal, state, and local governmental agencies, upon written request, may have access to these records in the performance of their duties and responsibilities. The identity of the deceased must remain confidential and exempt.²⁷

Persons other than those covered by the exceptions above have access to the photographs and recordings only with a court order upon a showing of good cause and are limited by any restrictions or stipulations that the court deems appropriate. In determining good cause, the court must consider the following:

- Whether such disclosure is necessary for the public evaluation of governmental performance;
- The seriousness of the intrusion into the family's right to privacy and whether such disclosure is the least intrusive means available; and
- The availability of similar information in other public records, regardless of form.²⁸

The specified family members must be given reasonable notice of a petition requesting access to the photographs and recordings, a copy of the petition, and the opportunity to be present and heard at any hearing on the matter.²⁹ Such access, if granted by the court, must be performed under the direct supervision of the custodian of the record or his or her designee.³⁰

²¹ FLA. CONST., art. I, s. 24(c).

²² Section 119.15(7), F.S.

²³ Ch. 2011-115, s. 1, Laws of Fla. (creating s. 406.136, F.S., effective July 1, 2011). "Killing of a person" is defined to mean "all acts or events that cause or otherwise relate to the death of any human being, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death." s. 406.136(1), F.S.

²⁴ Section 406.136(2), F.S.

²⁵ *Id.*

²⁶ Section 406.136(3), F.S.

²⁷ *Id.*

²⁸ Section 406.136(4), F.S.

²⁹ Section 406.136(5), F.S.

³⁰ Section 406.136(4)(c), F.S.

It is a third degree felony for any custodian of a photograph, video, or audio recording to willingly and knowingly violate these provisions. The same penalty applies to anyone who willingly and knowingly violates a court order issued under these provisions.³¹

The exemption does not apply to photographs or video or audio recordings submitted as part of a criminal or administrative proceeding; however, nothing prohibits a court in such proceedings from restricting the disclosure of a killing, crime scene, or similar photograph or video or audio recording.³² The exemption is retroactive, except that it is not intended to overturn, abrogate, or alter any existing court order in effect on July 1, 2011, that restricts or limits access to any such photograph or recording.³³

The exemption is patterned after the public record exemption created earlier in s. 406.135, F.S., relating to photographs and video and audio recordings of an autopsy held by a medical examiner.³⁴ The same justification that was used in the public necessity statement for autopsy photographs was also used for the exemption under review, and provides in part:

photographs or video or audio recordings that depict or record the killing of any person render a visual or aural representation of the deceased in graphic and often disturbing fashion. Such photographs or video or audio recordings provide a view of the deceased in the final moments of life, often bruised, bloodied, broken, with bullet wounds or other wounds, cut open, dismembered, or decapitated. As such, photographs or video or audio recordings that depict or record the killing of any person are highly sensitive representations of the deceased which, if heard, viewed, copied, or publicized, could result in trauma, sorrow, humiliation, or emotional injury to the immediate family of the deceased, as well as injury to the memory of the deceased. The Legislature recognizes that the existence of the World Wide Web and the proliferation of personal computers throughout the world encourages and promotes the wide dissemination of such photographs and video and audio recordings 24 hours a day and that widespread unauthorized dissemination of photographs and video and audio recordings would subject the immediate family of the deceased to continuous injury. The Legislature further recognizes that there continue to be other types of available information, such as crime scene reports, which are less intrusive and injurious to the immediate family members of the deceased and which continue to provide for public oversight.³⁵

The exemption is subject to the Open Government Sunset Review Act and as such, will be repealed on October 2, 2016, unless reviewed and reenacted by the Legislature.³⁶

³¹ Section 406.136(6), F.S.

³² *Id.* In *State v. Schenecker*, No. 11-CF-001376A (Fla. 13th Cir.Ct. August 3, 2011), *cert. denied sub nom.*, *Media General Operations v. State*, 71 So. 3d 124 (Fla. 2d DCA 2011), the circuit court applied the exemption to crime scene photographs of homicide victims.

³³ Section 406.136(7), F.S.

³⁴ Chapter 2001-1, s. 1, Laws of Fla.

³⁵ Chapter 2011-115, s. 2, Laws of Fla.

³⁶ Section 406.136(9), F.S.

Based upon the Open Government Sunset Review of the exemption, professional staff of the Senate Criminal Justice Committee recommends that the Legislature retain the public records exemption created in s. 406.136, F.S. This recommendation is made in light of information gathered for the Open Government Sunset Review, indicating that there is a public necessity to continue protecting photographs and video and audio recordings that depict or record the killing of any person when held by an agency because they are highly sensitive and personal representations of the deceased. As such, widespread and continuous display of these photographs or recordings subjects the surviving family members to unwarranted trauma and emotional distress and harms the memory of the deceased.³⁷

The Senate Criminal Justice Committee voted on February 1, 2016, to reenact the exemption but limit it to photographs and video and audio recordings held by an agency that depict or record the killing of a law enforcement officer who was acting in accordance with his or her official duties.³⁸

III. Effect of Proposed Changes:

The bill narrows the public records exemption in s. 406.136, F.S., which provides that photographs and video and audio recordings that depict or record the killing of any person when held by an agency are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, except they are accessible to certain specified family members of the deceased person and public governmental agencies without a court order. Under the bill, the exemption will only apply to photographs and video and audio recordings held by an agency that depict or record the killing of a law enforcement officer who was acting in accordance with his or her official duties.

The bill also amends s. 406.136, F.S., to remove the sentence that requires its repeal.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

³⁷ According to the majority of survey responses from state agencies, state universities and colleges, municipalities, and local law enforcement agencies that receive or maintain such records, the exemption should be reenacted because it protects information that is personal and highly sensitive, the release of which subjects the surviving family members to further trauma and emotional distress. The responses were as follows: out of 23 state agencies, 10 recommended reenactment (13 were not applicable); out of 20 state university and colleges, 6 recommended reenactment (14 were not applicable); out of 109 municipalities, including 49 police departments, 34 recommended reenactment (31 were from police departments) (77 were not applicable); and out of 32 sheriff's offices, 26 recommended reenactment (6 were not applicable). Several responses had no recommendation regarding repeal or reenactment. One response recommended repealing the exemption. Several responses recommended clarifying the notification provision. Reenactment was generally recommended to continue protecting the surviving family members from emotional distress and trauma and protecting the memory of the deceased.

³⁸ Committee members discussed and weighed heavily that the genesis for the exemption's creation was the killing of a police officer during a traffic stop in Tampa that was captured on the patrol car's video camera.

B. Public Records/Open Meetings Issues:

In *Campus Communications, Inc., v. Earnhardt*,³⁹ the Fifth District Court of Appeal upheld the law this exemption is patterned after (which exempts autopsy photographs and video and audio recordings) against an unconstitutional overbreadth challenge brought by a newspaper. The court held that the newspaper had not established good cause to view or copy the photographs and that the exemption applied retroactively.⁴⁰ The court found that s. 406.135, F.S., met constitutional and statutory requirements that the exemption is no broader than necessary to meet its public purpose, even though not all autopsy recordings are graphic and result in trauma when viewed. The court also found that the Legislature stated with specificity the public necessity justifying the exemption in ch. 2001-1, Laws of Fla.⁴¹ Furthermore, the court found the statute provides for disclosure of written autopsy reports, allows for the publication of exempted records upon good cause if the requisite statutory criterion is met, and is supported by a thoroughly articulated public policy to protect against trauma that is likely to result upon disclosure to the public.⁴²

The court concluded that it is the prerogative of the Legislature to determine that autopsy photographs are private and need to be protected and that this privacy right prevails over the right to inspect and copy public records. The court also stated that its function is to determine whether the Legislature made this determination in a constitutional manner. Finding that the statute was constitutionally enacted and that it was properly applied to the facts in this case, the Fifth District Court of Appeal affirmed the lower court's finding of constitutionality.⁴³ The court went on to certify the question of constitutionality to the Florida Supreme Court. On July 1, 2003, the Florida Supreme Court, per curiam, denied review of this case, leaving in place the appellate court's holding.⁴⁴

Since the bill narrows the scope of the public records exemption in s. 406.136, F.S., it does not require a two-thirds vote of each house of the Legislature for passage.

C. Trust Funds Restrictions:

None.

D. Constitutional Issues:

In a federal civil rights case filed against the County of San Diego, a federal appeals court found that the U.S. Constitution protects the right of a family not to have images of a deceased family member be publically disseminated.⁴⁵ The plaintiff in the case was a

³⁹ *Campus Communications, Inc.*, 821 So. 2d 388, 403 (Fla. 5th DCA 2002), *review dismissed* 845 So. 2d 894 (Fla. 2003), *review denied*, 848 So. 2d 1153 (Fla. 2003) *certiorari denied* 540 U.S. 1049 (2003).

⁴⁰ *Id.*

⁴¹ *Id.* at 395.

⁴² *Id.* at 394.

⁴³ *Id.* at 403.

⁴⁴ *Campus Communications, Inc. v. Earnhardt*, 845 So. 2d 894 (Fla. 2003), *review denied*, 848 So. 2d 1153 (Fla. 2003) *certiorari denied* 540 U.S. 1049 (2003).

⁴⁵ The lawsuit was filed under 42 U.S.C. s. 1983, which states: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any

mother whose two year old son died of a severe head injury while in the care of her paramour. During the investigation an autopsy was performed and photographs of the child's body were taken. The paramour was convicted of second degree murder, but the conviction was ultimately set aside.⁴⁶ The prosecutor in the case kept some of the photos after the case concluded. After retiring, the former prosecutor gave one of the photos and an article he wrote to the media.

In *Marsh v. County of San Diego*, the US District Court of Appeals for the Ninth Circuit found that “the common law right to non-interference with a family’s remembrance of a decedent is so ingrained in our traditions that it is protected” by the United States Constitution.⁴⁷ This constitutional right arises out of the right to privacy derived from the 14th Amendment.⁴⁸ The U.S. District Court of Appeals for the Ninth Circuit found that:

A common law right rises to the level of a constitutional right if it is “deeply rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty.” ...The *Favish* Court considered our history and traditions, and found that “th[e] well-established cultural tradition acknowledging a family's control over the body and death images of the deceased has long been recognized at common law.” For precisely the same reasons, we conclude that this right is also protected by substantive due process. (internal citations omitted).⁴⁹

The court found that the publication of a child’s autopsy photographs was an intrusion of a mother’s grief “without any legitimate government purpose – “shocks the conscience”” and therefore violated the plaintiff’s substantive due process rights.⁵⁰ In addition, the court also found that a parent has a constitutionally protected right to control a deceased child’s remains and the images of the child’s death.⁵¹

In addition to constitutionally protected substantive due process rights to privacy, the *Marsh* court also found that in the California law governing the images of autopsy photos had created a federal liberty interest which was protected by federal procedural due process rights.⁵² The 14th Amendment of the U.S. Constitution prohibits the deprivation of liberty without procedural due process. A state law may create a federally protected liberty interest if the state law contains:

citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief shall be considered to be a statute of the District of Columbia.

⁴⁶ *Marsh v. County of San Diego*, 680 F.3d 1148, 1152 (9th Cir. 2012).

⁴⁷ *Id.* at 1154

⁴⁸ *Id.* at 1153.

⁴⁹ *Id.* at 1154.

⁵⁰ *Id.* at 1155.

⁵¹ *Id.* at 1154.

⁵² *Id.* at 1155-1158.

(1) substantive predicates governing official decision making, and (2) explicitly mandatory language specifying the outcome that must be reached if the substantive predicates have been met.’ In order to contain the requisite substantive predicates. (internal citations and quotation marks omitted).⁵³

The *Marsh* court found that the California law met the requirements for creating a liberty interest protected by the U.S. Constitution and concluded:

California consciously and deliberately gave its citizens the right not to have government officials engage in unwarranted reproduction of autopsy photographs or other death images of deceased relatives. Once a state law creates that right, the [U.S.] Constitution steps in to protect it against deprivations without due process of law.⁵⁴

Ultimately, the defendants prevailed in the civil rights lawsuit because the *Marsh* court determined that the state attorney who gave the autopsy photo to the press was not acting under color of law because he had retired at the time he disseminated the photo. The *Marsh* court also found that at the time the former prosecutor kept the photo for personal use, there was no court had yet found that a federally protected constitutional right to privacy existed for images of a deceased family member.⁵⁵

The United States Supreme Court and the United States Court of Appeals for the Eleventh Circuit have not opined on whether a family has a constitutionally protected privacy interest in controlling the death related images of a deceased family member. It is unclear whether those courts would concur with and follow the reasoning in *Marsh*.⁵⁶ Under Florida law, there exists a constitutional right to privacy along with a statutory exemption protecting photographs and video and audio recordings of the killing of a person from disclosure. Given *Marsh* and Florida’s privacy protections, the Legislature may wish to consider the following questions on this policy:

- Are images of the killing of a person sufficiently similar to an autopsy photo to be protected under the substantive due process privacy rights afforded by the U.S. Constitution?

⁵³ *Id.* at 1155-1156.

⁵⁴ *Id.* at 1157-1158.

⁵⁵ *Id.* at 1159-1160.

⁵⁶ The United States Supreme Court and the United States Court of Appeals for the Eleventh Circuit, which includes Florida, have considered similar cases regarding the right of a family to control the publication of images of a deceased family member, however, none of those courts have considered whether such privacy rights were protected by the U.S. Constitution. A federal district court in the Wisconsin, which is located in the United States Court of Appeals for the Seventh Circuit, considered the question and expressly found that “the *Marsh* holding represents an expansion in substantive due process law not augured in Seventh Circuit precedent.” *Olejnik v. England*, 14-CV-88-JDP, 2015 WL 7588502, at *10 (W.D. Wis. 2015). The court in *Olejnik* found that the “[t]he Seventh Circuit has not recognized any constitutionally protected interest in the “right to remembrance” or to the non-interference with a loved one’s remains. Rather, the Seventh Circuit has recognized that the [United States] Supreme Court has emphasized how limited the scope of substantive due process is, and that substantive due process is “a modest limitation that prohibits government action only when it is random and irrational.” (internal citation omitted). *Id.*

- Does the current state constitutional privacy right and public record exemption regarding the killing of a person create a privacy interest which may be protected by procedural due process clause under the Fourteenth Amendment to the U.S. Constitution?

It is possible that a court could find that this bill conflicts with the constitutional privacy rights found in *Marsh*. Generally, federal law prevails over state laws when there is a conflict between the two because of the supremacy clause of the U.S. Constitution.⁵⁷

It should be noted that the Florida Constitution protects privacy, but those rights sometimes conflict with the right to public access which is also protected by the Florida Constitution. Article 1, section 23, of the Florida Constitution provides:

Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

Courts will look to the Legislature to balance these competing interests.⁵⁸

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

⁵⁷ Article VI, clause 2 of the U.S. Constitution provides: This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

⁵⁸ See *Campus Communications, Inc. v. Earnhardt*, 821 So. 2d 388, 402-403 (Fla. 5th DCA 2002) (“Thus our function here has not been to weigh these two constitutional rights with respect to autopsy photographs and determine whether the right that helps ensure an open government freely accessible by every citizen is more significant or profound than the right that preserves individual liberty and privacy. Rather, our function has been to determine whether the Legislature has declared that the latter prevails over the former in a manner that is consistent with the constitutional provisions that bestow upon it the power to do so.”); see also *Wallace v. Guzman*, 687 So. 2d 1351, 1354 (Fla. 3d DCA 1997) (noting “[t]he [L]egislature has balanced the private/public rights by creating the various exemptions from public disclosure contained in section 119.07, Florida Statutes (1995).”).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 406.136 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.

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

By the Committee on Criminal Justice

591-02917-16

20167022__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 406.136, F.S., which provides an exemption from public records requirements for a photograph or video or audio recording held by an agency that depicts or records the killing of a person; narrowing the exemption to depictions or recordings of the killing of a law enforcement officer who was acting in accordance with his or her official duties; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 406.136, Florida Statutes, is amended to read:

406.136 A photograph or video or audio recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties a ~~person.~~

(1) As used in this section, the term "killing of a law enforcement officer who was acting in accordance with his or her official duties" "~~killing of a person~~" means all acts or events that cause or otherwise relate to the death of a law enforcement officer who was acting in accordance with his or her official duties any human being, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death.

(2) A photograph or video or audio recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties a person is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I

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

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of the State Constitution, except that a surviving spouse of the decedent may view and copy any such photograph or video recording or listen to or copy any such audio recording. If there is no surviving spouse, then the surviving parents shall have access to such records. If there is no surviving spouse or parent, then an adult child shall have access to such records.

(3) (a) The deceased's surviving relative, with whom authority rests to obtain such records, may designate in writing an agent to obtain such records.

(b) A local governmental entity, or a state or federal agency, in furtherance of its official duties, pursuant to a written request, may view or copy a photograph or video recording or may listen to or copy an audio recording of the killing of a law enforcement officer who was acting in accordance with his or her official duties a person and, unless otherwise required in the performance of their duties, the identity of the deceased shall remain confidential and exempt.

(c) The custodian of the record, or his or her designee, may not permit any other person to view or copy such photograph or video recording or listen to or copy such audio recording without a court order.

(4) (a) The court, upon a showing of good cause, may issue an order authorizing any person to view or copy a photograph or video recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties a person or to listen to or copy an audio recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties a person and may prescribe any restrictions or

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

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62 stipulations that the court deems appropriate.

63 (b) In determining good cause, the court shall consider:

64 1. Whether such disclosure is necessary for the public
65 evaluation of governmental performance;

66 2. The seriousness of the intrusion into the family's right
67 to privacy and whether such disclosure is the least intrusive
68 means available; and

69 3. The availability of similar information in other public
70 records, regardless of form.

71 (c) In all cases, the viewing, copying, listening to, or
72 other handling of a photograph or video or audio recording that
73 depicts or records the killing of a law enforcement officer who
74 was acting in accordance with his or her official duties ~~a~~
75 ~~person~~ must be under the direct supervision of the custodian of
76 the record or his or her designee.

77 (5) A surviving spouse shall be given reasonable notice of
78 a petition filed with the court to view or copy a photograph or
79 video recording that depicts or records the killing of a law
80 enforcement officer who was acting in accordance with his or her
81 official duties ~~a person~~ or to listen to or copy any such audio
82 recording, a copy of such petition, and reasonable notice of the
83 opportunity to be present and heard at any hearing on the
84 matter. If there is no surviving spouse, then such notice must
85 be given to the parents of the deceased and, if the deceased has
86 no living parent, then to the adult children of the deceased.

87 (6) (a) Any custodian of a photograph or video or audio
88 recording that depicts or records the killing of a law
89 enforcement officer who was acting in accordance with his or her
90 official duties ~~a person~~ who willfully and knowingly violates

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91 this section commits a felony of the third degree, punishable as
92 provided in s. 775.082, s. 775.083, or s. 775.084.

93 (b) Any person who willfully and knowingly violates a court
94 order issued pursuant to this section commits a felony of the
95 third degree, punishable as provided in s. 775.082, s. 775.083,
96 or s. 775.084.

97 (c) A criminal or administrative proceeding is exempt from
98 this section but, unless otherwise exempted, is subject to all
99 other provisions of chapter 119, provided however that this
100 section does not prohibit a court in a criminal or
101 administrative proceeding upon good cause shown from restricting
102 or otherwise controlling the disclosure of a killing, crime
103 scene, or similar photograph or video or audio recordings in the
104 manner prescribed herein.

105 (7) This exemption shall be given retroactive application
106 and shall apply to all photographs or video or audio recordings
107 that depict or record the killing of a law enforcement officer
108 who was acting in accordance with his or her official duties ~~a~~
109 ~~person~~, regardless of whether the killing of the person occurred
110 before, on, or after July 1, 2011. However, nothing herein is
111 intended to, nor may be construed to, overturn or abrogate or
112 alter any existing orders duly entered into by any court of this
113 state, as of the effective date of this act, which restrict or
114 limit access to any photographs or video or audio recordings
115 that depict or record the killing of a law enforcement officer
116 who was acting in accordance with his or her official duties ~~a~~
117 ~~person~~.

118 (8) This section only applies to such photographs and video
119 and audio recordings held by an agency as defined in s. 119.011.

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120 ~~(9) This section is subject to the Open Government Sunset~~
121 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
122 ~~on October 2, 2016, unless reviewed and saved from repeal~~
123 ~~through reenactment by the Legislature.~~

124 Section 2. This act shall take effect October 1, 2016.

THE FLORIDA SENATE
APPEARANCE RECORD

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

Feb 24, 2016
Meeting Date

7022
Bill Number (if applicable)

Topic Recording the Killing of LEO

Amendment Barcode (if applicable)

Name Ken "cop-CHEN-ski" Koczynski

Job Title lobbyist

Address 300 East Brevard St

Phone 222-3329

Street

Talla
City

FL
State

32301
Zip

Email

Speaking: For Against Information

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

Representing Fla PBA Inc

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/24/2016

Meeting Date

Topic _____

Bill Number 7022
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/24/16
Meeting Date

7022
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Bill Peables

Job Title _____

Address PO Box 10930

Phone 850 566 3029

Tallahassee FL 32302
City State Zip

Email _____

Speaking: For Against Information

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

Representing City of Tampa

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 342

INTRODUCER: Banking and Insurance Committee and Senator Gibson

SUBJECT: Renters Insurance

DATE: February 23, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	Fav/CS
2.	<u>McAloon</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	<u>Matiyow</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 342 requires a landlord of residential real property to provide notice in the rental agreement whether the tenant is required to obtain renters insurance, and if so, to specify the coverage required. If the rental agreement does not require renters insurance, the rental agreement must provide a statement regarding the benefit of purchasing renters insurance.

II. Present Situation:

Part II of ch. 83, F.S., titled "Florida Residential Landlord and Tenant Act," governs the relationship between landlords and tenants under a residential lease agreement. The Landlord and Tenant Act contains certain mandatory provisions and disclosures that a landlord must provide to a tenant or prospective tenant. Specifically, a landlord must disclose in writing or a lease agreement:

- Whether the tenant's security deposit will be held in an interest or non-interest-bearing account; the name of the account depository and disclose the rate and time of interest payments within 30 days after receiving the security deposit.
- The name and address of the landlord or person authorized to receive notices and demands on the landlord's behalf.¹

¹ Section 83.50, F.S.

- Notice of the potential liquidated damages, if there is a liquidated damages provision in the lease.²
- A specific notice if the landlord has no liability for storing or disposing the tenant's personal property after the tenant surrenders the dwelling.³
- A specific warning of the health risks of radon gas and which also refers the tenant to the county health department for additional information.⁴

Renters insurance, sometimes referred to as tenants insurance, includes three basic types of protection. The basic types of protection are for personal possessions, liability, and additional living expenses.⁵

Standard renters insurance policies protect personal belongings against damage from fire, smoke, lightning, vandalism, theft, explosion, windstorm, water, and other disasters listed in the policy.

With respect to personal liability, standard renters insurance policies provide liability protection against lawsuits for bodily injury or property damage that the insured or the insured's family members cause to other people. It also pays for damages caused by pets to others in the home.

Finally, standard renters insurance policies cover additional living expenses. If the tenant's home is destroyed by a disaster, which is covered by the policy, renters insurance covers the additional costs incurred for the insured to reside elsewhere. Policies will generally reimburse the difference between additional living expenses and normal living expenses. Additional living expenses cover hotel bills, temporary rentals, restaurant meals and other expenses incurred while the home is being rebuilt.

A 2015 Insurance Information Institute poll conducted by ORC International found that 95 percent of homeowners had homeowners insurance. Among renters, only 40 percent said they had renters insurance. However, this proportion has been increasing since the first time the question was asked in 2011, when 29 percent of renters said they had renters insurance.⁶

III. Effect of Proposed Changes:

The bill creates s. 83.491, F.S., to require that a landlord make one of two notices regarding renters insurance in the lease agreement:

- First, if renters insurance is required by the landlord, the rental agreement must specify the coverage amounts required and provide space for the tenant to initial.
- Second, if the landlord does not required the purchase of renters insurance, the rental agreement must include a statement in substantially the following:
 - "The tenant is not required to obtain renters insurance; however, the tenant is strongly advised to obtain renters insurance to cover damage to or loss of personal property."

² Section 83.595(4), F.S.

³ Section 83.67(5), F.S.

⁴ Section 404.056(4), F.S.

⁵ Insurance Information Institute, *Renters Insurance*, at <http://www.iii.org/article/renters-insurance> (last visited Feb. 4, 2016).

⁶ Insurance Information Institute, *Renters Insurance*, at <http://www.iii.org/fact-statistic/renters-insurance> (last visited Feb. 4, 2016).

The bill further provides that the failure to provide the notice does not create a private cause of action or nullify any part of the rental agreement.

The bill has an effective date of July 1, 2016, and applies to residential leases entered into on or after January 1, 2017.

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:

Landlords will need to provide one of two additional notices regarding renters insurance. If the landlord requires renters insurance, the notice must be signed by the tenant. This may result in increased attorney fees for the landlord because of the added documentation requirements. The landlord may see a benefit through fewer tenants attempting to recover the value of damaged or lost goods from the landlord.

Tenants may start to buy more renters insurance policies because they are required to be notified of its existence. An increase in renters insurance policies will lead to reimbursement for lost or damages goods owned by the renter.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Real Property and Probate Section of The Florida Bar drafts a standardized lease that includes all provision required by state statutes. The draft lease is reviewed and approved for use by the Florida Supreme Court. The changes could require that an updated standardized lease be drafted and approved.⁷

VIII. Statutes Affected:

This bill creates section 83.491 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.)

CS by Banking and Insurance on January 26, 2016:

- Changes “Renter” to “Renters” throughout the bill;
- Applies notice requirements to leases entered into on or after January 1, 2017; and
- Clarifies that failure to provide such notice does not create a private cause of action or nullify any part of the rental agreement.

B. Amendments:

None.

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

⁷ Conversation with Arlene Catherine Udick of the Landlord Tenant Committee for the Real Property and Probate Trust Law Section of The Florida Bar (January 22, 2016).

By the Committee on Banking and Insurance; and Senator Gibson

597-02607-16

2016342c1

1 A bill to be entitled
 2 An act relating to renters insurance; creating s.
 3 83.491, F.S.; requiring a residential rental agreement
 4 to specify whether renters insurance is required;
 5 specifying provisions that must be included if
 6 insurance is or is not required; providing that
 7 failure to include a certain notice in a rental
 8 agreement does not create a private cause of action or
 9 nullify any part of the rental agreement; providing an
 10 effective date.

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. Section 83.491, Florida Statutes, is created to
 15 read:

16 83.491 Renters insurance.—A rental agreement entered into
 17 on or after January 1, 2017, must specify whether a tenant is
 18 required to obtain renters insurance and must provide in the
 19 agreement a line for the tenant's initials immediately following
 20 that provision.

21 (1) If renters insurance is required, the rental agreement
 22 must specify the coverage required.

23 (2) If renters insurance is not required, the rental
 24 agreement must provide a statement in substantially the
 25 following form: "The tenant is not required to obtain renters
 26 insurance; however, the tenant is strongly advised to obtain
 27 renters insurance to cover damage to or loss of personal
 28 property."

29 (3) Failure to provide the notice in subsection (2) does
 30 not create a private cause of action and does not nullify any
 31 part of the rental agreement under this part.

32 Section 2. This act shall take effect July 1, 2016.

Page 1 of 2

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

597-02607-16

2016342c1

33

Page 2 of 2

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/24/16

Meeting Date

342

Bill Number (if applicable)

Topic Renters Insurance

Amendment Barcode (if applicable)

Name Kelly Mallette

Job Title

Address 104 West Jefferson Street

Phone (850) 224-3427

Street

Tallahassee, FL 32301

City

State

Zip

Email Kelly@rlbrookpa.com

Speaking: For Against Information

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

Representing Florida Apartment Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/24/2016

Meeting Date

Topic _____

Bill Number 342
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100



COMMITTEES:
Criminal Justice, *Vice Chair*
Military and Veterans Affairs, Space, and
Domestic Security, *Vice Chair*
Appropriations Subcommittee on
Transportation, Tourism, and Economic
Development
Communications, Energy, and Public Utilities
Rules
Joint Legislative Auditing Committee

SENATOR AUDREY GIBSON
9th District

February 9, 2016

Senator David Simmons, Chair
Committee on Rules
515 Knott Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Chair Simmons *David*

I respectfully request that SB 342, relating to residential tenant insurance policies, be placed on the next committee agenda.

SB 342, requires a residential agreement to advise that if renters insurance is not required, the renters' personal belongings will not be covered in the event of damage to their domicile unless they acquire renters insurance. I have also included a copy of a press release which details the coverage gap between and income owners and renters in protecting themselves against hazard as well as copies of newspaper articles on the subject. This bill passed unanimously in both of its previous committees.

Thank you for your time and consideration.

Sincerely,

Audrey Gibson
State Senator
District 9

REPLY TO:

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

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/CS/SB 948

INTRODUCER: Rules Committee; Fiscal Policy Committee; Commerce and Tourism Committee; and Senator Richter

SUBJECT: Secondhand Dealers

DATE: February 24, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>McAloon</u>	<u>Cibula</u>	<u>JU</u>	<u>Favorable</u>
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Fav/CS</u>
4.	<u>Harmsen</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 948 revises the laws governing transactions by secondhand dealers. The bill amends the definition of “secondhand goods” to include gift cards and credit memos. The bill defines the term “automated kiosk” and amends the definition of “secondhand dealer” to include any secondhand dealer who is engaged in the business of purchasing secondhand goods by means of an automated kiosk.

The bill requires a secondhand dealer to maintain digital photos of the goods it acquires and provides requirements for recordkeeping when secondhand goods are purchased at an automated kiosk.

The bill extends the period from which a secondhand dealer must hold certain items, from 15 to 30 days from the initial acquisition. Additionally, any secondhand good acquired by use of an automated kiosk must be held for 30 days after the date the good is acquired.

The bill subjects a secondhand dealer to a noncriminal penalty punishable by a fine of up to \$2,500 when certain conditions are met.

The bill also allows a secondhand good to be kept at a location outside the jurisdiction of the appropriate law enforcement agency if there is an agreement between the law enforcement

official and the secondhand dealer, and the secondhand dealer can and will deliver the good to the appropriate law enforcement official within 2 days of the request.

The bill is effective July 1, 2016.

II. Present Situation:

The Florida Statutes regulate secondhand dealers and secondary metal recyclers in the trade of secondhand goods.¹ A secondhand dealer is defined as any person, corporation, or other business organization or entity that is not a secondary metals recycler and is engaged in the business of purchasing, consigning, or trading secondhand goods.² Secondhand goods are previously owned or used personal property that is purchased, consigned, or traded as used property. Secondhand goods do not include office furniture, pianos, books, clothing, organs, coins, motor vehicles, costume jewelry, cardio and strength training or conditioning equipment designed primarily for indoor use, and secondhand sports equipment that is not permanently labeled with a serial number.³

A secondhand dealer must annually register his or her business with the Department of Revenue.⁴

Upon each acquisition of secondhand goods, a secondhand dealer must complete a transaction form that details the goods purchased and the seller's identity. The secondhand dealer must retain this document for at least 3 years and forward a copy to the appropriate law enforcement agency within 24 hours after the acquisition of the secondhand goods.⁵ In addition to the descriptive statements of the secondhand goods and the seller's identity, the transaction record must also include:

- A statement of the date, time, and place of the transaction;
- A summary of the goods acquired, including brand name, model number, serial number, and other unique identifiers; and
- A description of the person from whom the goods were acquired, including his or her right thumbprint, name and address, and a physical description.⁶

Secondhand dealers are required to hold all secondhand goods for at least 15 days after they acquire the property.⁷ If a law enforcement officer has probable cause to believe that the goods held by a secondhand dealer are stolen, the officer may place a 90-day written hold order on the goods. This prevents the secondhand dealer from selling the goods and preserves them for use as evidence in a criminal trial.⁸ Additionally, this allows for the possibility of the goods to be returned to their rightful owner.

¹ See ch. 538, F.S.

² Section 538.03(1)(g), F.S.

³ Section 538.03(1)(h), F.S.

⁴ Section 538.09, F.S. Pawnbrokers were formerly regulated as secondhand dealers, but are now separately regulated under ch. 539, F.S.

⁵ Section 538.04, F.S.

⁶ Sections 538.04(1), F.S.

⁷ Section 538.06(1), F.S.

⁸ Section 538.06(3), F.S.

Law enforcement agencies with jurisdiction enforce compliance with registration, record keeping, holding periods, and inspection requirements.⁹ A person who knowingly violates the requirements governing secondhand dealers in ch. 538, F.S., commits a first degree misdemeanor, punishable by up to 1 year in jail and a \$10,000 fine.¹⁰

Methods for Return of Stolen Goods held by a Secondhand Dealer

A victim of a theft may recover his or her goods, or their value, through one of three methods:

- A victim may purchase his or her items back from the secondhand dealer, and then file a civil action against the thief for reimbursement of the cost expended.
- A court may order restitution or return of the goods to the secondhand dealer or victim of the crime.¹¹ If the court orders return of the goods or restitution to the victim, the court must also order restitution to the secondhand dealer from the person who sold the goods to the secondhand dealer.¹²
- A victim may file a civil action for replevin against the secondhand dealer.¹³

Replevin is an action for the repossession of personal property that was wrongfully taken or detained by the defendant, where the plaintiff secures a bond for and holds the property until the court decides the rightful owner.¹⁴ Petitions for replevin must contain the following information:

- Proof of ownership or entitlement to the property in question and a description of the property;
- A description of how, to the best of plaintiff's knowledge, the property was wrongfully taken by the defendant; and
- A statement that the property was not taken under any legal basis such as execution, tax, or fine.¹⁵

In an action for replevin, a court is required to award the prevailing party attorney fees and costs. When the petitioner is the prevailing party, the court may also order payment of the filing and service fees.¹⁶

Victims of theft and prevailing plaintiffs in an action for replevin are entitled to damages for loss of use, which are limited to no more than the value of the property before it was taken or damaged.¹⁷

Additionally, any person who traffics property that he or she knows to be stolen is subject to felony charges of dealing in stolen property under s. 812.019, F.S.

⁹ Section 538.05, F.S.

¹⁰ Section 538.07(1), F.S.

¹¹ Section 538.07(2), F.S.

¹² Section 538.06(4), F.S.

¹³ Section 538.08, F.S.

¹⁴ BLACK'S LAW DICTIONARY (10th ed. 2014) (defining the term "replevin"); *see also*, ch. 78, F.S., "Replevin."

¹⁵ Sections 78.055 and 538.08, F.S.

¹⁶ Section 538.08(2), F.S. Otherwise, the filing and services fees are waived.

¹⁷ *Foresight Enterprises, Inc. v. Leisure Time Properties, Inc.*, 466 So.2d 283, 286 (Fla. 5th DCA 1985).

Summary Procedure

Summary procedure is an expedited process for consideration of civil disputes, which is provided in s. 51.011, F.S.¹⁸ It streamlines civil litigation by shortening the time period for responding to a complaint, permitting fewer pleadings, and restricting the reasons for which a party may postpone the case. The procedure is only available to actions specified by statute or rule and is not currently available in actions of replevin against a secondhand dealer.¹⁹

III. Effect of Proposed Changes:

Section 1 amends s. 538.03, F.S., to define an “automated kiosk” as an interactive device that is permanently installed within a secure retail space and that has the following technological functions:

- Remotely monitored and attended by a live representative during all business operating hours;
- Verification of a seller’s identity by a government-issued photographic identification card;
- Automated reading and recording of an item’s serial number;
- Ability to compare item serial numbers against databases of stolen items;
- Secure storage of goods accepted by the kiosk; and
- Capture and storage of images of the item during the transaction.

The bill amends the definition of a “secondhand dealer” to include any secondhand dealer who is engaged in the business of purchasing secondhand goods by means of an automated kiosk.

The bill amends the definition of “secondhand goods” to include gift certificates and credit memos²⁰ which are purchased, consigned, or traded by a secondhand dealer.

Section 2 amends s. 538.04, F.S., to require secondhand dealers to include digital photos of the goods acquired in the report that is submitted to law enforcement upon acquisition of goods.

The bill requires when secondhand goods are acquired by means of an automated kiosk, the serial number reported to law enforcement may be the International Mobile Station Equipment Identity (IMEI), the mobile equipment identifier (MEID), or another unique identifying number assigned to the device by the manufacturer. If the IMEI, MEID, or other unique identifying number is not available at the time of receipt or purchase, a unique tracking number must be assigned to the good, and the report must be updated with the IMEI, MEID, or other unique identifying number as soon as possible but no later than 10 business days after acquisition. When the IMEI, MEID, or other unique identifying number is discovered, the dealer must notify appropriate law enforcement personnel.

¹⁸ Daniel Morman, *Application of Summary Procedure by Agreement: A Proposal to Expedite Litigation*, 76 FLA. BAR J. 12, 12 (Feb. 2002).

¹⁹ Section 51.011, F.S.

²⁰ Section 501.95, F.S., defines “credit memo” as a certificate, card, stored value card, or similar instrument issued in exchange for returned merchandise when the certificate, card, or similar instrument is redeemable for merchandise, food, or services regardless of whether any cash may be paid to the owner of the certificate, card, or instrument as part of the redemption transaction.

The holding requirements of ss. 538.06 and 538.09(3), F.S., do not begin until all required reports are complete and submitted to the appropriate law enforcement official.

Section 3 amends s. 538.06, F.S., to increase the time from 15 to 30 days that a secondhand dealer must hold a precious metal;²¹ gemstone; jewelry; an antique furnishing, fixture, or decorative object; and an item of art as defined in s. 686.501, F.S.²² The bill defines the term “antique” to mean that the item is at least 30 years old and has a special value because of its age.

The bill also prohibits a secondhand dealer who uses an automated kiosk from selling, bartering, exchanging, altering, adulterating, using, or in any way disposing of any secondhand good within 30 days after the date it was acquired.

Section 4 amends s. 538.08, F.S., to modify the processes by which a person may file an action for replevin to re-take possession of his or her goods currently in possession of a secondhand dealer. Specifically, the bill:

- Expands parties eligible to file a replevin action to include an individual who can display a right of possession to the property (lienor). Current law only allows a party who alleges ownership of the property to file such an action.
- Entitles a plaintiff who files an action for replevin to the summary procedure provided for in s. 51.011, F.S.
- Subjects a secondhand dealer to a noncriminal violation, punishable by a fine of up to \$2,500, if the following occur:
 - An owner or lienor makes a written demand for return of the property and provides proof of ownership or proof of the right of possession to the secondhand dealer at least 5 days before filing a replevin action;
 - The secondhand dealer knows or should have known based on the proof provided above, the property belongs to the owner or lienor;
 - The secondhand dealer fails to return the property and does not file an action for interpleader²³ to determine conflicting claims to the property; and
 - The owner or lienor prevails in the replevin action against the secondhand dealer.

Section 5 amends s. 538.09, F.S., to reference s. 538.06, F.S., regarding the change of the holding period from 15 days to 30 days for certain secondhand goods.

The bill allows storage of secondhand goods outside the appropriate law enforcement official’s jurisdiction if it is agreed upon with such law enforcement official. The secondhand dealer must

²¹ Section 538.03(1), F.S. defines “precious metals” as any item containing any gold, silver, or platinum, or any combination thereof, excluding any chemical or any automotive, photographic, electrical, medical, or dental materials, or electric parts.

²² Section 686.501, F.S., defines “art” as a painting, sculpture, drawing, work of graphic art, pottery, weaving, batik, macramé, quilt, print, photograph, or craft work executed in materials including, but not limited to, clay, textile, paper, fiber, wood, tile, metal, plastic, or glass. The term includes a rare map which is offered as a limited edition or a map 80 years old or older; or a rare document or rare print which includes, a print, engraving, etching, woodcut, lithograph, or serigraph which is offered as a limited edition, or one 80 years old or older.

²³ Generally, interpleader is suit to determine a right to property held by a disinterested third party (called a stakeholder) who is in doubt about ownership and who therefore deposits the property with the court to permit interested parties to litigate ownership. BLACK’S LAW DICTIONARY (10th ed. 2014) (defining the term “interpleader”).

provide proof that he or she is able to and agrees to deliver the stored secondhand good to the appropriate law enforcement official within 2 business days of the request.

Section 6 provides the bill is effective July 1, 2016.

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:

Victims of property theft will have more efficient and less costly judicial remedies to recover their stolen goods when the goods are found at the business of a secondhand dealer.

Secondhand dealers may incur extra costs related to the requirement to hold property for 30 days and the digital storage of photographs of the property. Additionally, secondhand dealers will now be subject to a noncriminal penalty of up to \$2,500, if specific conditions are met.

C. Government Sector Impact:

To the extent that the bill results in additional replevin actions, judicial workloads may increase.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 538.03, 538.04, 538.06, 538.08, and 538.09, F.S.

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/CS by Rules on February 24, 2016:

The committee substitute:

- Clarifies the definition of “kiosk”;
- Replaces the term “official identification issued in the United States” with “government-issued photographic identification card” to provide for consistent terminology throughout the chapter; and
- Requires the assignment of unique tracking numbers to secondhand goods purchased by means of an automated kiosk when the good’s IMEI, MEID, or other unique identifying number is not available at the time of receipt or purchase, and mandates notification of appropriate law enforcement personnel when the IMEI, MEID, or other identifying number is discovered.

CS/CS by Fiscal Policy on February 17, 2016:

The committee substitute:

- Defines the term “automated kiosk”;
- Amends the definition of “secondhand dealer” to include a secondhand dealer engaged in business of purchasing secondhand goods by an automatic kiosk;
- Amends the definition of “secondhand goods” to include gift cards and credit memos;
- Clarifies the conditions that must be met to subject a secondhand dealer to a noncriminal violation;
- Conforms a statute reference regarding the change of the holding period from 15 days to 30 days for certain secondhand goods;
- Provides requirements for recordkeeping when secondhand goods are purchased at an automated kiosk;
- Prohibits a secondhand dealer from selling, bartering, exchanging, altering, adulterating, using, or in any way disposing of any secondhand good within 30 days after the date when the good is acquired by use of an automated kiosk; and
- Allows a secondhand good to be kept at a location outside the jurisdiction of the appropriate law enforcement agency, if there is an agreement between the law enforcement official and the secondhand dealer, and the secondhand dealer can and will deliver the good to the appropriate law enforcement official within 2 days of the request.

CS by Commerce and Tourism on January 19, 2016:

- Revises the 30-day hold to apply only to antique furnishings, fixtures, and decorative objects, in addition to precious metals, gemstones, jewelry, and specific items of art;

all other items acquired by a secondhand dealer will continue to be subject to a 15-day hold period.

- Subjects secondhand dealers to a noncriminal penalty of up to \$2,500 in cases where the dealer loses in an action for replevin, and where specific requirements are met by the claimant.

B. Amendments:

None.

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



626212

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/24/2016	.	
	.	
	.	
	.	

The Committee on Rules (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete lines 42 - 100

and insert:

2. Verification of a seller's identity by government-issued
photographic identification card;

3. Automated reading and recording of item serial numbers;

4. Ability to compare item serial numbers against databases
of stolen items;

5. Secure storage of goods accepted by the kiosk; and

6. Capture and storage of images during the transaction.



626212

12 (h)~~(g)~~ "Secondhand dealer" means any person, corporation,
13 or other business organization or entity which is not a
14 secondary metals recycler subject to part II and which is
15 engaged in the business of purchasing, consigning, or trading
16 secondhand goods. The term includes any secondhand dealer
17 engaged in the business of purchasing secondhand goods by means
18 of an automated kiosk.

19 (i)~~(h)~~ "Secondhand goods" means personal property
20 previously owned or used, which is not regulated metals property
21 regulated under part II and which is purchased, consigned, or
22 traded as used property. The term includes gift certificates and
23 credit memos as defined in s. 501.95 which are purchased,
24 consigned, or traded by a secondhand dealer. The term does ~~such~~
25 ~~secondhand goods~~ do not include office furniture, pianos, books,
26 clothing, organs, coins, motor vehicles, costume jewelry, cardio
27 and strength training or conditioning equipment designed
28 primarily for indoor use, and secondhand sports equipment that
29 is not permanently labeled with a serial number. ~~As used in For~~
30 ~~purposes of this paragraph, the term~~ "secondhand sports
31 equipment" does not include golf clubs.

32 Section 2. Paragraphs (c) and (d) of subsection (1) of
33 section 538.04, Florida Statutes, are redesignated as paragraphs
34 (d) and (e), respectively, and a new paragraph (c) is added to
35 that subsection, and subsection (8) is added to that section to
36 read:

37 538.04 Recordkeeping requirements; penalties.—

38 (1) A secondhand dealer shall complete a secondhand dealers
39 transaction form at the time of the actual transaction. A
40 secondhand dealer shall maintain a copy of a completed



626212

41 transaction form on the registered premises for at least 1 year
42 after the date of the transaction. However, the secondhand
43 dealer shall maintain a copy of the transaction form for not
44 less than 3 years. Unless other arrangements are agreed upon by
45 the secondhand dealer and the appropriate law enforcement
46 official, the secondhand dealer shall, within 24 hours after
47 acquiring any secondhand goods, deliver to such official a
48 record of the transaction on a form approved by the Department
49 of Law Enforcement. Such record shall contain:

50 (c) Digital photos of the goods, clearly showing the items
51 required to be included on the record as provided in paragraph
52 (b).

53 (8) When secondhand goods are purchased by means of an
54 automated kiosk, the serial number reported pursuant to this
55 section may be the International Mobile Station Equipment
56 Identity (IMEI), the mobile equipment identifier (MEID), or
57 another unique identifying number assigned to the device by the
58 manufacturer. If the IMEI, MEID, or other unique identifying
59 number is not available at the time of receipt or purchase, the
60 report filed pursuant to this section must be updated with the
61 IMEI, MEID, or other unique identifying number as soon as
62 possible, but no later than 10 business days after the date of
63 acquisition. If such identifying numbers are not available at
64 the time of the transaction, the business shall assign another
65 unique identifier to the item which directly associates the item
66 to the transaction that it was purchased in. Upon entering or
67 updating any information on the transaction form, a law
68 enforcement official, as designated by the sheriff or the chief
69 of the jurisdiction in which the item was purchased, must be



626212

70 timely notified in writing or by electronic means, as required
71 by the sheriff or chief of the jurisdiction. If, upon receiving
72 the device and correcting the missing information, the company
73 finds that the item was misappropriated or stolen, the
74 appropriate law enforcement official must be notified. The
75 holding requirements of s. 538.06 and s.

76

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

78 And the title is amended as follows:

79 Delete line 7

80 and insert:

81 number; requiring a different method of identification
82 when certain numbers are not available; requiring
83 secondhand dealers to notify a law enforcement
84 official under certain circumstances; providing that
85 certain holding requirements do



458392

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/24/2016	.	
	.	
	.	
	.	

The Committee on Rules (Richter) recommended the following:

1 **Senate Substitute for Amendment (626212) (with title**
2 **amendment)**

3
4 Delete lines 38 - 100

5 and insert:

6 permanently installed within a secure retail space and that:

7 1. Is remotely monitored by a live representative during
8 all business operating hours;

9 2. Verifies a seller's identity by a government-issued
10 photographic identification card;

11 3. Performs automated reading and recording of item serial



12 numbers;

13 4. Compares item serial numbers against databases of stolen
14 items;

15 5. Securely stores goods accepted by the kiosk; and

16 6. Captures and stores images during the transaction.

17 (h) ~~(g)~~ "Secondhand dealer" means any person, corporation,
18 or other business organization or entity which is not a
19 secondary metals recycler subject to part II and which is
20 engaged in the business of purchasing, consigning, or trading
21 secondhand goods. The term includes any secondhand dealer
22 engaged in the business of purchasing secondhand goods by means
23 of an automated kiosk.

24 (i) ~~(h)~~ "Secondhand goods" means personal property
25 previously owned or used, which is not regulated metals property
26 regulated under part II and which is purchased, consigned, or
27 traded as used property. The term includes gift certificates and
28 credit memos as defined in s. 501.95 which are purchased,
29 consigned, or traded by a secondhand dealer. The term does ~~Such~~
30 ~~secondhand goods~~ do not include office furniture, pianos, books,
31 clothing, organs, coins, motor vehicles, costume jewelry, cardio
32 and strength training or conditioning equipment designed
33 primarily for indoor use, and secondhand sports equipment that
34 is not permanently labeled with a serial number. As used in ~~For~~
35 ~~purposes of~~ this paragraph, the term "secondhand sports
36 equipment" does not include golf clubs.

37 Section 2. Paragraphs (c) and (d) of subsection (1) of
38 section 538.04, Florida Statutes, are redesignated as paragraphs
39 (d) and (e), respectively, and a new paragraph (c) is added to
40 that subsection, and subsection (8) is added to that section to



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41 read:

42 538.04 Recordkeeping requirements; penalties.—

43 (1) A secondhand dealer shall complete a secondhand dealers
44 transaction form at the time of the actual transaction. A
45 secondhand dealer shall maintain a copy of a completed
46 transaction form on the registered premises for at least 1 year
47 after the date of the transaction. However, the secondhand
48 dealer shall maintain a copy of the transaction form for not
49 less than 3 years. Unless other arrangements are agreed upon by
50 the secondhand dealer and the appropriate law enforcement
51 official, the secondhand dealer shall, within 24 hours after
52 acquiring any secondhand goods, deliver to such official a
53 record of the transaction on a form approved by the Department
54 of Law Enforcement. Such record shall contain:

55 (c) Digital photos of the goods, clearly showing the items
56 required to be included on the record as provided in paragraph
57 (b).

58 (8) When secondhand goods are purchased by means of an
59 automated kiosk, the serial number reported pursuant to this
60 section may be the International Mobile Station Equipment
61 Identity (IMEI), the mobile equipment identifier (MEID), or
62 another unique identifying number assigned to the device by the
63 manufacturer. If the IMEI, MEID, or other unique identifying
64 number is not available at the time of receipt or purchase, the
65 report filed pursuant to this section must be updated with the
66 IMEI, MEID, or other unique identifying number as soon as
67 possible, but no later than 10 business days after the date of
68 acquisition. If such identifying numbers are not available at
69 the time of the transaction, the business shall assign another



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70 unique identifier to the item which directly associates the item
71 with the transaction that it was purchased in. Upon entering or
72 updating any information on the transaction form, a law
73 enforcement official, as designated by the sheriff or the chief
74 of the jurisdiction in which the item was purchased, must be
75 timely notified in writing or by electronic means, as required
76 by the sheriff or chief of the jurisdiction. If, upon receiving
77 the device and correcting the missing information, the company
78 finds that the item was misappropriated or stolen, the
79 appropriate law enforcement official must be notified. The
80 holding requirements of s. 538.06 and s.

81
82 ===== T I T L E A M E N D M E N T =====

83 And the title is amended as follows:

84 Delete line 7

85 and insert:

86 number; requiring a different method of identification
87 when certain numbers are not available; requiring
88 secondhand dealers to notify a law enforcement
89 official under certain circumstances; providing that
90 certain holding requirements do

By the Committees on Fiscal Policy; and Commerce and Tourism;
and Senator Richter

594-03756A-16

2016948c2

A bill to be entitled

An act relating to secondhand dealers; amending s. 538.03, F.S.; revising definitions; amending s. 538.04, F.S.; requiring that the record of a secondhand dealer transaction include digital photos of the items; specifying what may be used as a serial number; providing that certain holding requirements do not begin until certain reports are submitted to the appropriate law enforcement official; amending s. 538.06, F.S.; revising the required holding period for certain goods acquired by a dealer; defining the term "antique"; amending s. 538.08, F.S.; authorizing an action in replevin against a secondhand dealer based on a right of possession to stolen goods; revising the form for a complaint for return of stolen goods; providing that a plaintiff in a replevin action is entitled to a certain summary procedure; providing that a secondhand dealer commits a noncriminal violation under certain circumstances; providing a penalty; amending s. 538.09, F.S.; revising the period of time a secondhand dealer must hold secondhand goods at a registered location; authorizing a secondhand dealer to store secondhand goods outside the appropriate law enforcement official's jurisdiction, subject to certain conditions; providing an effective date.

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

Section 1. Present paragraphs (c) through (j) of subsection (1) of section 538.03, Florida Statutes, are redesignated as

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paragraphs (d) through (k), respectively, a new paragraph (c) is added to that subsection, and present paragraphs (g) and (h) of that subsection are amended, to read:

538.03 Definitions; applicability.—

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

(c) "Automated kiosk" means an interactive device that is permanently installed within a secure retail space and that has the following technological functions:

1. Remotely monitored and attended by a live representative during all business operating hours;

2. Verification of a seller's identity by official identification issued in the United States;

3. Automated reading and recording of item serial numbers;

4. Ability to compare item serial numbers against databases of stolen items;

5. Secure storage of goods accepted by the kiosk; and

6. Capture and storage of images during the transaction.

(h) (g) "Secondhand dealer" means any person, corporation, or other business organization or entity which is not a secondary metals recycler subject to part II and which is engaged in the business of purchasing, consigning, or trading secondhand goods. The term includes any secondhand dealer engaged in the business of purchasing secondhand goods by means of an automated kiosk.

(i) (h) "Secondhand goods" means personal property previously owned or used, which is not regulated metals property regulated under part II and which is purchased, consigned, or traded as used property. The term includes gift certificates and credit memos as defined in s. 501.95 which are purchased,

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61 consigned, or traded by a secondhand dealer. The term does ~~Such~~
 62 ~~secondhand goods do~~ not include office furniture, pianos, books,
 63 clothing, organs, coins, motor vehicles, costume jewelry, cardio
 64 and strength training or conditioning equipment designed
 65 primarily for indoor use, and secondhand sports equipment that
 66 is not permanently labeled with a serial number. As used in ~~For~~
 67 ~~purposes of~~ this paragraph, the term "secondhand sports
 68 equipment" does not include golf clubs.

69 Section 2. Paragraphs (c) and (d) of subsection (1) of
 70 section 538.04, Florida Statutes, are redesignated as paragraphs
 71 (d) and (e), respectively, and a new paragraph (c) is added to
 72 that subsection, and subsection (8) is added to that section to
 73 read:

74 538.04 Recordkeeping requirements; penalties.—

75 (1) A secondhand dealer shall complete a secondhand dealers
 76 transaction form at the time of the actual transaction. A
 77 secondhand dealer shall maintain a copy of a completed
 78 transaction form on the registered premises for at least 1 year
 79 after the date of the transaction. However, the secondhand
 80 dealer shall maintain a copy of the transaction form for not
 81 less than 3 years. Unless other arrangements are agreed upon by
 82 the secondhand dealer and the appropriate law enforcement
 83 official, the secondhand dealer shall, within 24 hours after
 84 acquiring any secondhand goods, deliver to such official a
 85 record of the transaction on a form approved by the Department
 86 of Law Enforcement. Such record shall contain:

87 (c) Digital photos of the goods, clearly showing the items
 88 required to be included on the record as provided in paragraph
 89 (b).

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90 (8) When secondhand goods are purchased by means of an
 91 automated kiosk, the serial number reported pursuant to this
 92 section may be the International Mobile Station Equipment
 93 Identity (IMEI), the mobile equipment identifier (MEID), or
 94 other unique identifying number assigned to the device by the
 95 manufacturer. If the IMEI, MEID, or other unique identifying
 96 number is not available at the time of receipt or purchase, the
 97 report filed pursuant to this section must be updated with the
 98 IMEI, MEID, or other unique identifying number as soon as
 99 possible, but no later than 10 business days after the date of
 100 acquisition. The holding requirements of s. 538.06 and s.
 101 538.09(3) do not begin until all required reports are complete
 102 and submitted to the appropriate law enforcement official.

103 Section 3. Subsection (1) of section 538.06, Florida
 104 Statutes, is amended to read:

105 538.06 Holding period.—

106 (1) (a) A secondhand dealer may ~~shall~~ not sell, barter,
 107 exchange, alter, adulterate, use, or in any way dispose of any
 108 secondhand good:

109 1. That is a precious metal, a gemstone, jewelry; an
 110 antique furnishing, fixture, or decorative object; or an item of
 111 art as defined in s. 686.501 within 30 calendar days after the
 112 date on which the good was acquired.

113 2. That is not described in subparagraph 1. ~~goods~~ within 15
 114 calendar days after ~~of~~ the date on which the good was acquired
 115 ~~of acquisition of the goods.~~

116 3. Within 30 calendar days after the date on which the good
 117 is acquired if the secondhand dealer uses an automated kiosk.

118

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119 Such holding periods are not applicable when the person known by
120 the secondhand dealer to be the person from whom the goods were
121 acquired desires to redeem, repurchase, or recover the goods,
122 provided the dealer can produce the record of the original
123 transaction with verification that the customer is the person
124 from whom the goods were originally acquired.

125 (b) As used in this subsection, the term "antique" means
126 the item is at least 30 years old and has special value because
127 of its age.

128 Section 4. Section 538.08, Florida Statutes, is amended to
129 read:

130 538.08 Stolen goods; complaint ~~petition~~ for return.-

131 (1) If the secondhand dealer contests the identification,
132 ~~or~~ ownership, or right of possession of the property, the person
133 alleging ownership or right of possession of the property may,
134 provided that a timely report of the theft of the goods was made
135 to the proper authorities, bring an action for replevin in the
136 county or circuit court. The complaint may be ~~by petition~~ in
137 substantially the following form:

138 Plaintiff A. B. sues defendant C. D., and alleges:

- 139 1. This is an action to recover possession of personal
- 140 property in County, Florida.
- 141 2. The description of the property is: ...(list
- 142 property)... To the best of plaintiff's knowledge, information,
- 143 and belief, the value of the property is \$.....
- 144 3. Plaintiff is the lawful owner of the property or is
- 145 entitled to ~~the~~ possession of the property under a security
- 146 agreement dated, ... (year) ..., a copy of which is
- 147

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148 attached.

149 4. To plaintiff's best knowledge, information, and belief,
150 the property is located at

151 5. The property is wrongfully detained by defendant.
152 Defendant came into possession of the property by ...(describe
153 method of possession)... To plaintiff's best knowledge,
154 information, and belief, defendant detains the property because
155 ...(give reasons)....

156 6. The property has not been taken under an execution or
157 attachment against plaintiff's property.

158
159 (2) The filing fees shall be waived by the clerk of the
160 court, and the service fees shall be waived by the sheriff. The
161 court shall award the prevailing party attorney ~~attorney's~~ fees
162 and costs. In addition, when the filing party prevails in the
163 replevin action, the court shall order payment of filing fees to
164 the clerk and service fees to the sheriff.

165 (3) Upon the filing of the complaint ~~petition~~, the court
166 shall set a hearing to be held at the earliest possible time.
167 The plaintiff is entitled to the summary procedure provided in
168 s. 51.011. Upon ~~the receipt of the complaint a petition for a~~
169 ~~writ by a secondhand dealer~~, the secondhand dealer shall hold
170 the property at issue until the court determines the respective
171 interests of the parties.

172 (4) In addition to the civil complaint ~~petition~~ for return
173 remedy, the state may file a motion as part of a pending
174 criminal case related to the property. The criminal court has
175 jurisdiction to determine ownership, to order return or other
176 disposition of the property, and to order ~~any~~ appropriate

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177 restitution to any person. Such order shall be entered upon
 178 hearing after proper notice has been given to the secondhand
 179 dealer, the victim, and the defendant in the criminal case.

180 (5) A secondhand dealer commits a noncriminal violation,
 181 punishable as provided in s. 775.083 by a fine of up to \$2,500,
 182 if all of the following occur:

183 (a) An owner or a lienor makes a written demand for return
 184 of the property and provides proof of ownership or proof of the
 185 right of possession to the secondhand dealer at least 5 calendar
 186 days before filing a replevin action.

187 (b) The secondhand dealer knows or should have known based
 188 on the proof provided under paragraph (a) that the property
 189 belongs to the owner or lienor.

190 (c) The secondhand dealer fails to return the property and
 191 does not file an action in interpleader to determine conflicting
 192 claims to the property.

193 (d) The owner or lienor prevails in the replevin action
 194 against the secondhand dealer.

195 Section 5. Subsection (3) of section 538.09, Florida
 196 Statutes, is amended to read:

197 538.09 Registration.—

198 (3) The secondhand dealer's registration shall be
 199 conspicuously displayed at her or his registered location. A
 200 secondhand dealer must hold secondhand goods at the registered
 201 location for the period required by s. 538.06 ~~until 15 days~~
 202 ~~after the secondhand transaction~~ or until any extension of the
 203 holding period has expired, whichever is later. Storage at a
 204 registered location outside the appropriate law enforcement
 205 official's jurisdiction is permissible only upon agreement with

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206 such law enforcement official and if the secondhand dealer
 207 provides proof that he or she is able to and agrees to deliver
 208 the stored secondhand goods to the appropriate law enforcement
 209 official within 2 business days upon request.

210 Section 6. This act shall take effect July 1, 2016.

211

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/24/16
Meeting Date

SB 948
Bill Number (if applicable)

Topic SECOND HAND DEALERS

AS AMENDED
Amendment Barcode (if applicable)

Name DOUGLAS MULDOON

Job Title DIRECTOR OF LAW ENFORCEMENT RELATIONS

Address 1504 KNOLL RIDGE DRIVE
Street

Phone 321-863-9167

MALBOURNE FL 32940
City State Zip

Email DMULDOON@ECOATM.COM

Speaking: For Against Information

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

Representing ECO ATM

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/24/2016

Meeting Date

SB 948

Bill Number (if applicable)

AS AMENDED

Amendment Barcode (if applicable)

Topic SECONDHAND DEALERS

Name SLATER BATLISS

Job Title

Address 215 S. MOUROE ST

Street

Phone 850 222 8960

TALLAHASSEE FL 32301

City

State

Zip

Email SWB@cardenaslaw.com

Speaking: For Against Information

Waive Speaking: In Support Against

(The Chair will read this information into the record.)

Representing TECHNET

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/24/16

Meeting Date

948

Bill Number (if applicable)

Topic Secondhand Dealers

Amendment Barcode (if applicable)

Name Samantha Padgett

Job Title Vice President & General Counsel

Address 227 S. Adams St.

Phone 222-4082

Street

Tallahassee

FL

32301

City

State

Zip

Email Samantha@frf.org

Speaking: For Against Information

Waive Speaking: In Support Against

(The Chair will read this information into the record.)

Representing Florida Retail Federation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/24/2016
Meeting Date

SB 0948
Bill Number (if applicable)

Topic SECONDHAND DEALERS

Amendment Barcode (if applicable)

Name RICHARD FORTEN

Job Title SERGEANT VOLUSIA COUNTY SHERIFFS OFFICE

Address 101 EAST CANAL STREET
Street

Phone 386-423-330

NEW SMYRNA FL 32168
City State Zip

Email R.FORTEN@VCSO.US

Speaking: For Against Information

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

Representing FLORIDA SHERIFFS ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

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 1034

INTRODUCER: Judiciary Committee and Senator Simmons

SUBJECT: Health Care Providers

DATE: February 23, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	Favorable
2.	Davis	Cibula	JU	Fav/CS
3.	Lloyd	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1034 allows a free clinic using volunteer health care providers to receive a grant or legislative appropriation to support the delivery of services while retaining the sovereign immunity protections under existing law. This financial support may be used to employ providers to supplement, coordinate, or otherwise support the volunteers.

The definition of a health care provider or provider in the Access to Health Care Act is expanded to include a pharmacy or licensed pharmacist. Accordingly, a pharmacy or pharmacy providing services under the act is given sovereign immunity as an agent of the state.

The bill also provides that employees and agents of the free clinics are protected from lawsuits under the state's sovereign immunity protections.

II. Present Situation:

Access to Health Care Act

Section 766.1115, F.S., is entitled "The Access to Health Care Act" (the act). It was enacted in 1992 to encourage health care providers to provide care to low-income persons.¹ The act is

¹ Low-income persons are defined in the act as a person who is Medicaid-eligible, a person who is without health insurance and whose family income does not exceed 200 percent of the federal poverty level, or any eligible client of the Department of Health who voluntarily chooses to participate in a program offered or approved by the department. Section 766.1115(3)(e),

administered by the Department of Health (department) through the Volunteer Health Services Program.² Volunteers complete an enrollment application with the department which requires a personal reference and background checks.³

The act extends sovereign immunity to health care providers who execute a contract with a governmental contractor and who, as agents of the state, provide volunteer, uncompensated health care services to low-income individuals. These health care providers are considered agents of the state under s. 768.28(9), F.S., for purposes of extending sovereign immunity while acting within the scope of duties required under the act.

A contract under the act must pertain to volunteer, uncompensated services. For services to qualify as volunteer, uncompensated services, the health care provider must receive no compensation from the governmental contractor for any services provided under the contract and must not bill or accept compensation from the recipient or any public or private third-party payor for the specific services provided to the low-income recipients covered by the contract.⁴

Health care providers under the act include:⁵

- A birth center licensed under ch. 383, F.S.⁶
- An ambulatory surgical center licensed under ch. 395, F.S.⁷
- A hospital licensed under ch. 395, F.S.⁸
- A physician or physician assistant licensed under ch. 458, F.S.⁹
- An osteopathic physician or osteopathic physician assistant licensed under ch. 459, F.S.¹⁰
- A chiropractic physician licensed under ch. 460, F.S.¹¹
- A podiatric physician licensed under ch. 461, F.S.¹²
- A registered nurse, nurse midwife, licensed practical nurse, or advanced registered nurse practitioner licensed or registered under part I of ch. 464, F.S., or any facility that employs nurses licensed or registered under part I of ch. 464, F.S., to supply all or part of the care delivered under the act.¹³
- A dentist or dental hygienist licensed under ch. 466, F.S.¹⁴

F.S. A single individual whose annual income does not exceed \$23,540 is at 200 percent of the federal poverty level using Medicaid data. *See 2015 Poverty Guidelines, Annual Guidelines* (September 3, 2015), available at <http://aspe.hhs.gov/poverty/15poverty.cfm>.

² See Florida Dep't of Health, Division of Public Health Statistics and Performance Management, *Volunteer Health Services*, available at <http://www.floridahealth.gov/provider-and-partner-resources/getting-involved-in-public-health/volunteerism-volunteer-opportunities/index.html> (last visited Jan. 8, 2016); and Rule Chapter 64I-2, F.A.C.

³ Florida Dep't of Health, Division of Public Health Statistics and Performance Management, *Volunteer Services Policy*, pp. 12-13, available at <http://www.floridahealth.gov/provider-and-partner-resources/getting-involved-in-public-health/volunteer-health-services-opportunities/VHS2PolicyDOHP380-7-14.pdf> (last visited Feb. 5, 2016).

⁴ Section 766.1115(3)(a), F.S.

⁵ Section 766.1115(3)(d), F.S.

⁶ Section 766.1115(3)(d)1., F.S.

⁷ Section 766.1115(3)(d)2., F.S.

⁸ Section 766.1115(3)(d)3., F.S.

⁹ Section 766.1115(3)(d)4., F.S.

¹⁰ Section 766.1115(3)(d)5., F.S.

¹¹ Section 766.1115(3)(d)6., F.S.

¹² Section 766.1115(3)(d)7., F.S.

¹³ Section 766.1115(3)(d)8., F.S.

¹⁴ Section 766.1115(3)(d)13., F.S.

- A midwife licensed under ch. 467, F.S.¹⁵
- A health maintenance organization certificated under part I of ch. 641, F.S.¹⁶
- A health care professional association and its employees or a corporate medical group and its employees.¹⁷
- Any other medical facility the primary purpose of which is to deliver human medical diagnostic services or which delivers nonsurgical human medical treatment, and which includes an office maintained by a provider.¹⁸
- A free clinic that delivers only medical diagnostic services or nonsurgical medical treatment free of charge to all low-income recipients.¹⁹
- Any other health care professional, practitioner, provider, or facility under contract with a governmental contractor, including a student enrolled in an accredited program that prepares the student for licensure as a physician, physician assistant, nurse, or midwife.²⁰
- Any nonprofit corporation qualified as exempt from federal income taxation under s. 501(a) of the Internal Revenue Code, and described in s. 501(c) of the Internal Revenue Code, that delivers health care services provided by the listed licensed professionals, any federally funded community health center, and any volunteer corporation or volunteer health care provider that delivers health care services.

A governmental contractor is defined in the act as the department, a county health department, a special taxing district having health care responsibilities, or a hospital owned and operated by a governmental entity.²¹

The act further specifies additional contract requirements. The contract must provide that:

- The governmental contractor retains the right of dismissal or termination of any health care provider delivering services under the contract.
- The governmental contractor has access to the patient records of any health care provider delivering services under the contract.
- The health care provider must report adverse incidents and information on treatment outcomes.
- The governmental contractor or the health care provider must make patient selection and initial referrals.
- The health care provider is subject to supervision and regular inspection by the governmental contractor.²²
- The health care provider must accept all referred patients; however, the contract may specify limits on the number of patients to be referred.²³

¹⁵ Section 766.1115(3)(d)9., F.S.

¹⁶ Section 766.1115(3)(d)10., F.S.

¹⁷ Section 766.1115(3)(d)11., F.S.

¹⁸ Section 766.1115(3)(d)12., F.S.

¹⁹ Section 766.1115(3)(d)14., F.S.

²⁰ Section 766.1115(3)(d)15., F.S.

²¹ Section 766.1115(3)(c), F.S.

²² Section 766.1115(4), F.S.

²³ Rule 64I-2.003(2), F.A.C.

The governmental contractor must provide written notice to each patient, or the patient's legal representative, receipt of which must be acknowledged in writing, that the provider is covered under s. 768.28, F.S., for purposes of legal actions alleging medical negligence.²⁴

According to the department, from July 1, 2014, through June 30, 2015, 12,569 licensed health care volunteers (plus an additional 9,938 clinic staff volunteers) provided 373,588 health care patient visits with a total value of donated goods and services of more than \$271 million, under the act.²⁵ The Florida Department of Financial Services, Division of Risk Management, reported that as of January 7, 2015, that 10 claims had been filed against the Volunteer Health Care Provider Program under s. 766.1115, F.S., since February 15, 2000.²⁶

Legislative Appropriation to Free and Charitable Clinics

The use of prior fiscal year appropriations by the Florida Association of Free and Charitable Clinics under the act had been restricted to clinic capacity building purposes via the contract with the department which distributed the appropriations. Clinic capacity building was limited to products or processes that increase skills, infrastructure, and resources of clinics. The department did not authorize these funds to be used to build capacity through the employment of clinical personnel.

The department cautiously interpreted the provision in the act relating to volunteer, uncompensated services, which states that a health care provider must receive no compensation from the governmental contractor for any services provided under the contract. Accordingly, the department's interpretation precluded the use of the appropriation for this purpose.

The Florida Association of Free and Charitable Clinics received a \$9.5 million appropriation in the 2015-2016 General Appropriations Act through the department.²⁷ However, this fiscal year's appropriation was vetoed by the Governor "because the funds could not be used for services, and therefore it is not a statewide priority for improving cost, quality, and access in healthcare."²⁸

Sovereign Immunity

The term "sovereign immunity" originally referred to the English common law concept that the government may not be sued because "the King can do no wrong." Sovereign immunity bars lawsuits against the state or its political subdivisions for the torts of officers, employees, or agents of those governments unless the immunity is expressly waived.

Article X, section 13 of the Florida Constitution recognizes the concept of sovereign immunity and gives the Legislature the power to waive immunity in part or in full by general law.

²⁴ Section 766.1115(5), F.S.

²⁵ Florida Dep't of Health, *Volunteer Health Services 2014-2015 Annual Report* (December 1, 2015), available at <http://www.floridahealth.gov/provider-and-partner-resources/getting-involved-in-public-health/volunteer-health-services-opportunities/VHS1415annualreport.pdf> (last visited Jan. 7, 2016).

²⁶ Id at A-1.

²⁷ Chapter 2015-232, Laws of Fla., line item 441.

²⁸ Governor Rick Scott, *Veto Message to Secretary of State Ken Detzner* (June 23, 2015), p. 35, available at <http://www.flgov.com/wp-content/uploads/2015/06/Transmittal%20Letter%206.23.15%20-%20SB%202500-A.pdf> (last visited Jan. 7, 2016).

Section 768.28, F.S., contains the limited waiver of sovereign immunity applicable to the state. Under this statute, officers, employees, and agents of the state will not be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function. However, personal liability may result from actions committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Instead, the state steps in as the party litigant and defends against the claim. The recovery by any one person is limited to \$200,000 for one incident and the total for all recoveries related to one incident is limited to \$300,000.²⁹ The sovereign immunity recovery caps do not prevent a plaintiff from obtaining a judgment in excess of the caps, but the plaintiff cannot recover the excess damages without action by the Legislature.³⁰

Whether sovereign immunity applies turns on the degree of control of the agent of the state retained by the state.³¹ In *Stoll v. Noel*, the Florida Supreme Court explained that independent contractor physicians may be agents of the state for purposes of sovereign immunity:

One who contracts on behalf of another and subject to the other's control except with respect to his physical conduct is an agent and also independent contractor.³²

The court examined the employment contract between the physicians and the state to determine whether the state's right to control was sufficient to create an agency relationship and held that it did.³³ The court explained:

Whether CMS [Children's Medical Services] physician consultants are agents of the state turns on the degree of control retained or exercised by CMS. This Court has held that the right to control depends upon the terms of the employment contract. . . . CMS requires each consultant, as a condition of participating in the CMS program, to agree to abide by the terms published in its HRS³⁴ Manual and CMS Consultant's Guide which contain CMS policies and rules governing its relationship with the consultants. The Consultant's Guide states that all services provided to CMS patients must be authorized in advance by the clinic medical director. The language of the HRS Manual ascribes to CMS responsibility to supervise and direct the medical care of all CMS patients and supervisory authority over all personnel. The manual also grants to the CMS medical director absolute authority over payment for treatments proposed by consultants. The HRS Manual and the Consultant's Guide demonstrate that CMS has final authority over all care and treatment

²⁹ Section 768.28(5), F.S.

³⁰ *Id.*

³¹ *Stoll v. Noel*, 694 So. 2d 701, 703 (Fla. 1997).

³² *Id.* at 703, quoting from the *Restatement (Second) of Agency* s. 14N (1957).

³³ *Id.* at 703.

³⁴ Florida Department of Health and Rehabilitative Services.

provided to CMS patients, and it can refuse to allow a physician consultant's recommended course of treatment of any CMS patient for either medical or budgetary reasons.

Our conclusion is buttressed by HRS's acknowledgement that the manual creates an agency relationship between CMS and its physician consultants, and despite its potential liability in this case, HRS has acknowledged full financial responsibility for the physicians' actions. HRS's interpretation of its manual is entitled to judicial deference and great weight.³⁵

III. Effect of Proposed Changes:

Access to Health Care Act (Section 1)

The bill authorizes a free clinic³⁶ to receive and use appropriations or grants from a governmental entity or nonprofit corporation to support the delivery of contracted services by volunteer health care providers under the Access to Health Care Act without those funds being deemed compensation which might jeopardize the sovereign immunity protections afforded in the act. The bill authorizes these appropriations or grants to be used for the employment of health care providers to supplement, coordinate, or support the delivery of services by volunteer health care providers. The receipt and use of the appropriation or grant, according to the bill, does not constitute the acceptance of compensation for the specific services provided to the low-income recipients covered by the contract.

The bill inserts the phrase "employees or agents" in several provisions in the act to clarify that employees and agents of a health care provider, which typically are paid by a health care provider, fall within the sovereign immunity protections of the contracted health care provider when acting pursuant to the contract.

Additionally, a pharmacy or pharmacist licensed under chapter 465, the pharmacy act, is granted sovereign immunity under the bill. This is done by including a pharmacy or pharmacist in the definition of a "health care provider" or "provider."

Subsection (5) requires the governmental contractor to provide written notice to each patient, or the patient's legal representative, that the provider is an agent of the governmental contractor and that the exclusive remedy for injury or damage suffered as the result of any act or omission of the provider *or of any employee or agent thereof* acting within the scope of duties pursuant to the contract is by commencement of an action pursuant to the provisions of s. 768.28, F.S.

The bill provides for efficiencies in health care delivery under the contract by requiring the patient, or the patient's legal representative, to acknowledge in writing receipt of the notice of agency relationship between the government contractor and the health care provider at the initial visit only. Thereafter, the notice requirement is met by posting the notice in a place conspicuous

³⁵ *Stoll*, 694 So. 2d at 703 (Fla. 1997) (internal citations omitted).

³⁶ A free clinic for purposes of this provision is a clinic that delivers only medical diagnostic services or nonsurgical medical treatment free of charge to all low-income recipients.

to all persons. According to a Department of Health analysis of the bill, patients are currently informed that the provider is an agent of a governmental contractor at each visit.³⁷

Sovereign Immunity (Section 2)

Section 768.28, F.S., which pertains to the waiver of sovereign immunity in tort actions, is amended to specifically include a health care provider's employees or agents in the definition of an "officer, employee, or agent." This is done to avoid any potential ambiguity between the provisions in that section of law and the Access to Health Care Act.

Additional Provisions and Effective Date

The bill removes obsolete language and makes technical and grammatical changes.

The effective date of the bill is July 1, 2016.

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:

Contracted free clinics may receive governmental funding in the form of an appropriation or grant without the concern of restrictions on such funding for certain uses that might be imposed by the act. The receipt of any such funding is speculative at this point, and therefore, the amount is indeterminate.

Private health care providers currently delivering services to uninsured individuals may see a reduction in their uncompensated care costs as these individuals seek care in these clinics with expanded resources.

³⁷ Florida Department of Health, *Senate Bill 1034 Legislative Bill Analysis* (Dec. 7, 2015) (on file with the Senate Committee on Judiciary).

C. **Government Sector Impact:**

The department will be responsible for management of the contracts with the clinics.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 766.1115 and 768.28.

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 February 16, 2016:

The definition of “health care provider” or “provider” in the Access to Health Care Act is expanded to include a pharmacy or pharmacist. With this addition, a pharmacy or pharmacist is added to the list of those entities or individuals for whom sovereign immunity applies for purposes of protection from lawsuits under the act.

B. **Amendments:**

None.

By the Committee on Judiciary; and Senator Simmons

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1 A bill to be entitled
 2 An act relating to health care providers; amending s.
 3 766.1115, F.S.; revising the definitions of the terms
 4 "contract" and "health care provider"; deleting an
 5 obsolete date; extending sovereign immunity to
 6 employees or agents of a health care provider that
 7 executes a contract with a governmental contractor;
 8 clarifying that a receipt of specified notice must be
 9 acknowledged by a patient or the patient's
 10 representative at the initial visit; requiring the
 11 posting of notice that a specified health care
 12 provider is an agent of a governmental contractor;
 13 amending s. 768.28, F.S.; revising the definition of
 14 the term "officer, employee, or agent" to include
 15 employees or agents of a health care provider;
 16 providing an effective date.

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

18 Section 1. Paragraphs (a) and (d) of subsection (3) and
 19 subsections (4) and (5) of section 766.1115, Florida Statutes,
 20 are amended to read:

21 766.1115 Health care providers; creation of agency
 22 relationship with governmental contractors.—

23 (3) DEFINITIONS.—As used in this section, the term:

24 (a) "Contract" means an agreement executed in compliance
 25 with this section between a health care provider and a
 26 governmental contractor for volunteer, uncompensated services
 27 which allows the health care provider to deliver health care
 28 services to low-income recipients as an agent of the
 29 governmental contractor. ~~The contract must be for volunteer,~~
 30 ~~uncompensated services, except as provided in paragraph (4)(g).~~
 31
 32

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33 For services to qualify as volunteer, uncompensated services
 34 under this section, the health care provider, or any employee or
 35 agent of the health care provider, must receive no compensation
 36 from the governmental contractor for any services provided under
 37 the contract and must not bill or accept compensation from the
 38 recipient, or a public or private third-party payor, for the
 39 specific services provided to the low-income recipients covered
 40 by the contract, except as provided in paragraph (4)(g). A free
 41 clinic as described in subparagraph (d)14. may receive a
 42 legislative appropriation, a grant through a legislative
 43 appropriation, or a grant from a governmental entity or
 44 nonprofit corporation to support the delivery of contracted
 45 services by volunteer health care providers, including the
 46 employment of health care providers to supplement, coordinate,
 47 or support the delivery of such services. The appropriation or
 48 grant for the free clinic does not constitute compensation under
 49 this paragraph from the governmental contractor for services
 50 provided under the contract, nor does receipt or use of the
 51 appropriation or grant constitute the acceptance of compensation
 52 under this paragraph for the specific services provided to the
 53 low-income recipients covered by the contract.
 54 (d) "Health care provider" or "provider" means:
 55 1. A birth center licensed under chapter 383.
 56 2. An ambulatory surgical center licensed under chapter
 57 395.
 58 3. A hospital licensed under chapter 395.
 59 4. A physician or physician assistant licensed under
 60 chapter 458.
 61 5. An osteopathic physician or osteopathic physician

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62 assistant licensed under chapter 459.

63 6. A chiropractic physician licensed under chapter 460.

64 7. A podiatric physician licensed under chapter 461.

65 8. A registered nurse, nurse midwife, licensed practical
66 nurse, or advanced registered nurse practitioner licensed or
67 registered under part I of chapter 464 or any facility which
68 employs nurses licensed or registered under part I of chapter
69 464 to supply all or part of the care delivered under this
70 section.

71 9. A midwife licensed under chapter 467.

72 10. A health maintenance organization certificated under
73 part I of chapter 641.

74 11. A health care professional association ~~and its~~
75 ~~employees~~ or a corporate medical group ~~and its employees~~.

76 12. Any other medical facility the primary purpose of which
77 is to deliver human medical diagnostic services or which
78 delivers nonsurgical human medical treatment, and which includes
79 an office maintained by a provider.

80 13. A dentist or dental hygienist licensed under chapter
81 466.

82 14. A free clinic that delivers only medical diagnostic
83 services or nonsurgical medical treatment free of charge to all
84 low-income recipients.

85 15. A pharmacy or pharmacist licensed under chapter 465.

86 ~~16.15.~~ Any other health care professional, practitioner,
87 provider, or facility under contract with a governmental
88 contractor, including a student enrolled in an accredited
89 program that prepares the student for licensure as any one of
90 the professionals listed in subparagraphs 4.-9.

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91
92 The term includes any nonprofit corporation qualified as exempt
93 from federal income taxation under s. 501(a) of the Internal
94 Revenue Code, and described in s. 501(c) of the Internal Revenue
95 Code, which delivers health care services provided by licensed
96 professionals listed in this paragraph, any federally funded
97 community health center, and any volunteer corporation or
98 volunteer health care provider that delivers health care
99 services.

100 (4) CONTRACT REQUIREMENTS.—A health care provider that
101 executes a contract with a governmental contractor to deliver
102 health care services ~~on or after April 17, 1992,~~ as an agent of
103 the governmental contractor, or any employee or agent of such
104 health care provider, is an agent for purposes of s. 768.28(9),
105 while acting within the scope of duties under the contract, if
106 the contract complies with the requirements of this section and
107 regardless of whether the individual treated is later found to
108 be ineligible. A health care provider, or any employee or agent
109 of such health care provider, shall continue to be an agent for
110 purposes of s. 768.28(9) for 30 days after a determination of
111 ineligibility to allow for treatment until the individual
112 transitions to treatment by another health care provider. A
113 health care provider, or any employee or agent of such health
114 care provider, under contract with the state may not be named as
115 a defendant in any action arising out of medical care or
116 treatment ~~provided on or after April 17, 1992,~~ under contracts
117 entered into under this section. The contract must provide that:

118 (a) The right of dismissal or termination of any health
119 care provider delivering services under the contract is retained

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120 by the governmental contractor.

121 (b) The governmental contractor has access to the patient
122 records of any health care provider delivering services under
123 the contract.

124 (c) Adverse incidents and information on treatment outcomes
125 must be reported by any health care provider to the governmental
126 contractor if the incidents and information pertain to a patient
127 treated under the contract. The health care provider shall
128 submit the reports required by s. 395.0197. If an incident
129 involves a professional licensed by the Department of Health or
130 a facility licensed by the Agency for Health Care
131 Administration, the governmental contractor shall submit such
132 incident reports to the appropriate department or agency, which
133 shall review each incident and determine whether it involves
134 conduct by the licensee that is subject to disciplinary action.
135 All patient medical records and any identifying information
136 contained in adverse incident reports and treatment outcomes
137 which are obtained by governmental entities under this paragraph
138 are confidential and exempt from the provisions of s. 119.07(1)
139 and s. 24(a), Art. I of the State Constitution.

140 (d) Patient selection and initial referral must be made by
141 the governmental contractor or the provider. Patients may not be
142 transferred to the provider based on a violation of the
143 antidumping provisions of the Omnibus Budget Reconciliation Act
144 of 1989, the Omnibus Budget Reconciliation Act of 1990, or
145 chapter 395.

146 (e) If emergency care is required, the patient need not be
147 referred before receiving treatment, but must be referred within
148 48 hours after treatment is commenced or within 48 hours after

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149 the patient has the mental capacity to consent to treatment,
150 whichever occurs later.

151 (f) The provider is subject to supervision and regular
152 inspection by the governmental contractor.

153 (g) ~~As an agent of the governmental contractor for purposes~~
154 ~~of s. 768.28(9), while acting within the scope of duties under~~
155 ~~the contract,~~ A health care provider licensed under chapter 466,
156 as an agent of the governmental contractor for purposes of s.
157 768.28(9), may allow a patient, or a parent or guardian of the
158 patient, to voluntarily contribute a monetary amount to cover
159 costs of dental laboratory work related to the services provided
160 to the patient within the scope of duties under the contract.
161 This contribution may not exceed the actual cost of the dental
162 laboratory charges.

163
164 A governmental contractor that is also a health care provider is
165 not required to enter into a contract under this section with
166 respect to the health care services delivered by its employees.

167 (5) NOTICE OF AGENCY RELATIONSHIP.—The governmental
168 contractor must provide written notice to each patient, or the
169 patient's legal representative, receipt of which must be
170 acknowledged in writing at the initial visit, that the provider
171 is an agent of the governmental contractor and that the
172 exclusive remedy for injury or damage suffered as the result of
173 any act or omission of the provider or of any employee or agent
174 thereof acting within the scope of duties pursuant to the
175 contract is by commencement of an action pursuant to ~~the~~
176 ~~provisions of~~ s. 768.28. Thereafter, or with respect to any
177 federally funded community health center, the notice

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178 requirements may be met by posting in a place conspicuous to all
179 persons a notice that the health care provider, or federally
180 funded community health center, is an agent of the governmental
181 contractor and that the exclusive remedy for injury or damage
182 suffered as the result of any act or omission of the provider or
183 of any employee or agent thereof acting within the scope of
184 duties pursuant to the contract is by commencement of an action
185 pursuant to ~~the provisions of~~ s. 768.28.

186 Section 2. Paragraph (b) of subsection (9) of section
187 768.28, Florida Statutes, is amended to read:

188 768.28 Waiver of sovereign immunity in tort actions;
189 recovery limits; limitation on attorney fees; statute of
190 limitations; exclusions; indemnification; risk management
191 programs.—

192 (9)

193 (b) As used in this subsection, the term:

194 1. "Employee" includes any volunteer firefighter.

195 2. "Officer, employee, or agent" includes, but is not
196 limited to, any health care provider, and its employees or
197 agents, when providing services pursuant to s. 766.1115; any
198 nonprofit independent college or university located and
199 chartered in this state which owns or operates an accredited
200 medical school, and its employees or agents, when providing
201 patient services pursuant to paragraph (10)(f); and any public
202 defender or her or his employee or agent, including, among
203 others, an assistant public defender and an investigator.

204 Section 3. This act shall take effect July 1, 2016.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/24/2016

Meeting Date

Topic _____

Bill Number 1038
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

CourtSmart Tag Report

Room: EL 110
Caption: Senate Rules Committee

Case No.:
Judge:

Type:

Started: 2/24/2016 10:02:10 AM
Ends: 2/24/2016 12:00:40 PM Length: 01:58:31

10:02:11 AM Senator Simmons calls the meeting to order
10:02:19 AM roll call
10:02:20 AM quorum present
10:03:45 AM SB 612 by Senator Hays
10:03:56 AM Senator Hays explains the bill
10:04:49 AM Senator Joyner with a question
10:05:25 AM Senator Hays responds
10:05:30 AM Brian Pitts, Justice 2 Jesus speaks
10:07:44 AM Senator Latvala with in debate
10:08:01 AM Senator Simmons responds
10:08:07 AM Senator Joyner in debate
10:08:14 AM Senator Hays close on the bill
10:08:45 AM roll call on SB 612
10:09:32 AM SB 612 is favorable
10:10:18 AM SB 776 by Senator Bradley
10:10:32 AM Senator Bradley explains the bill
10:11:25 AM Joseph Salzvergs, Florida Municipal Electric Authority waives in support
10:11:37 AM Suzanne Goss of JEA waives in support
10:11:48 AM Kevin Newman, Orlando Utilities Commission waives in support
10:11:57 AM Brian Pitts speaks
10:14:01 AM Senator Bradley waives close on the bill
10:14:10 AM roll call on SB 776
10:14:19 AM SB 776 reported favorable
10:14:49 AM SB 960 by Senator Bradley
10:14:57 AM Senator Bradley explains the bill
10:16:16 AM Senator Gibson with a question
10:16:21 AM Senator Bradley responds
10:17:54 AM David Ramba of Florida Automobile Dealers Assn. waives in support
10:18:08 AM Kelly Mallette of Auto Nation waives in support
10:18:19 AM Brian Pitts speaks
10:20:22 AM Senator Bradley waives close on the bill
10:20:35 AM roll call on SB 960
10:20:44 AM SB 960 reported favorable
10:21:16 AM SB 1652 by Senator Bradley and Bean
10:21:34 AM Senator Bradley explains the bill
10:24:10 AM Senator Montford with a question
10:26:13 AM Senator Joyner with a question
10:26:24 AM Senator Bradley responds
10:28:12 AM Senator Joyner with a follow up question
10:28:35 AM Senator Bradley responds
10:29:35 AM Senator Joyner with a question
10:30:10 AM Senator Gibson with a question
10:32:37 AM Senator Bradley responds
10:33:41 AM Senator Benacquisto with a question
10:34:25 AM Senator Bradley responds
10:35:30 AM Senator Benacquisto with a follow up question
10:36:22 AM Senator Bradley responds
10:36:48 AM Senator Benacquisto with a question
10:37:09 AM Senator Bradley responds
10:37:29 AM Senator Soto with a questions
10:37:38 AM Senator Bradley responds
10:38:53 AM Senator Joyner with a question
10:39:36 AM Mayor Curry, Mayor of Jacksonville speaks
10:40:06 AM Senator Benacquisto with a question for Mayor Curry
10:40:19 AM Mayor Curry responds
10:40:43 AM Senator Benacquisto with a question
10:41:03 AM Mayor Curry responds
10:41:20 AM Senator Soto with a question
10:41:26 AM Mayor Curry responds
10:42:57 AM Senator Gibson with a question
10:43:21 AM Mayor Curry responds
10:44:37 AM Senator Montford with a question
10:45:05 AM Mayor Curry responds
10:46:06 AM Senator Montford with a follow up question
10:46:34 AM Mayor Curry responds
10:47:27 AM Senator Negron with a question
10:47:54 AM Mayor Curry responds

10:48:17 AM Senator Negron with a follow up question
10:48:29 AM Mayor Curry responds
10:48:38 AM Senator Negron with a question
10:48:54 AM Mayor Curry responds
10:49:04 AM Senator Bradley speaks
10:49:46 AM Senator Negron with a question
10:49:56 AM Mayor Curry responds
10:50:32 AM Senator Latvala with a question
10:51:04 AM Mayor Curry responds
10:51:24 AM Mayor Curry with additional comments
10:52:46 AM Charlie Latham City of Jacksonville Beach speaks
10:54:47 AM Randy Wyse President Jacksonville Assoc of Firefighters waives in support
10:55:08 AM Randy Reeves of Fraternal Order of Police waives in support
10:55:18 AM Brian Pitts Justice 2 Jesus speaks
10:57:08 AM Senator Latvala in debate
10:58:41 AM Senator Gaetz in debate
11:01:11 AM Senator Gibson in debate
11:02:47 AM Senator Joyner in debate
11:05:09 AM Senator Bradley closes on the bill
11:06:02 AM roll call SB 1652
11:06:13 AM SB 1652 reported favorable
11:06:51 AM SB 298 by Senator Evers
11:07:05 AM Senator Evers explains the bill
11:07:30 AM Amendment 155268
11:07:48 AM Amendment to Amendment 449336
11:08:24 AM Amendment 155268 by Senator Lee is explained
11:08:56 AM by Senator Evers
11:09:37 AM Senator Negron with a question
11:10:02 AM Senator Evers responds
11:10:43 AM Senator Negron with a follow up question
11:11:04 AM Senator Evers responds
11:11:17 AM Cynthia Henderson waives in support
11:11:36 AM Amendment adopted
11:11:47 AM Back on the bill as amended
11:11:57 AM Senator Gibson in debate
11:12:37 AM Senator Evers responds
11:13:08 AM Senator Negron with a question
11:13:51 AM Senator Evers responds
11:14:17 AM Senator Negron with a question
11:14:47 AM Senator Evers responds
11:14:56 AM Senator Negron with a question
11:15:02 AM Senator Evers responds
11:15:25 AM Senator Negron speaks
11:15:43 AM Senator Evers responds
11:16:47 AM Roll call on SB 298
11:17:10 AM SB 298 reported favorable
11:18:16 AM SB 7000 by Senator Simpson
11:18:31 AM Senator Simpson explains the bill
11:18:56 AM Amendment 925234 by Senator Diaz de la Portilla
11:19:11 AM Senator Simpson explains the amendment
11:19:30 AM Senator Simpson waives close on the amendment
11:20:01 AM amendment is adopted
11:20:05 AM back on the bill as amended
11:20:11 AM Senator Joyner with a question
11:20:29 AM Senator Simpson responds
11:21:01 AM Senator Joyner with a follow up question
11:21:17 AM Senator Simpson responds
11:21:28 AM Senator Diaz de la Portilla comments
11:22:36 AM Senator Soto with a question
11:23:03 AM Senator Simpson responds
11:23:34 AM Senator Soto with a follow up question
11:23:40 AM Senator Simpson responds
11:24:19 AM Senator Simpson waives close on the bill as amended
11:24:29 AM roll call on SB 7000
11:24:34 AM SB 7000 reported favorable
11:25:27 AM SB 1156 by Senator Hudson
11:25:34 AM Senator Hudson explains the bill
11:26:15 AM Senator Gibson with a question
11:26:46 AM Senator Hudson responds
11:27:11 AM Senator Gibson with a follow up question
11:27:29 AM Senator Hudson responds
11:28:01 AM Cheryl Stuart Association of Florida Community Developers speaks
11:29:15 AM Senator Gibson with a question
11:29:23 AM Cheryl Stuart responds
11:29:38 AM Senator Hudson waives close on the bill
11:29:51 AM roll call SB 1156
11:29:58 AM SB 1156 reported favorable
11:30:43 AM SJR 1424 by Senator Bean

11:30:51 AM Senator Bean explains the bill
11:32:38 AM Senator Montford with a question
11:32:48 AM Senator Bean responds
11:33:18 AM Senator Soto with a question
11:33:25 AM Senator Bean responds
11:33:53 AM Senator Soto with a question
11:34:00 AM Senator Bean responds
11:34:49 AM Senator Joyner with a question
11:35:43 AM Senator Bean responds
11:36:14 AM Senator Gaetz in debate
11:37:50 AM Senator Montford in debate
11:38:10 AM Senator Negron in debate
11:39:00 AM Senator Soto in debate
11:39:31 AM Senator Bean waives close on the bill
11:39:39 AM roll call on SJR 1424
11:39:54 AM SJR 1424 reported favorable
11:40:25 AM SB 342 by Senator Gibson
11:40:34 AM Senator Gibson explains the bill
11:41:25 AM Kelly Mallette, Florida Apartment Association waives in support
11:41:35 AM Brian Pitts speaks
11:42:34 AM Senator Gibson waives close on the bill
11:42:46 AM roll call SB 342
11:42:51 AM SB 342 reported favorable
11:43:40 AM SB 7022 by Criminal Justice Committee
11:43:54 AM Donna Dugger explains the bill
11:44:55 AM Senator Latvala moves the bill
11:45:13 AM Ken Kopezyuski, Fla PBA Inc. waives in support
11:45:24 AM Brian Pitts waives in support
11:45:31 AM Bill Peebles, City of Tampa waives in support
11:45:44 AM roll call SB 7022
11:45:52 AM SB 7022 reported favorable
11:46:29 AM SB 948 by Senator Richter
11:46:36 AM Senator Richter explains the bill
11:47:48 AM Substitute amendment 458392 by Senator Richter
11:48:53 AM Richard Fortin, Florida Sheriff's Association waives in support
11:49:46 AM Samantha Padgett waives in support
11:50:01 AM Substitute amendment adopted
11:50:06 AM Back on the bill as amended
11:50:16 AM Slater Batliss of Technet waives in support
11:50:24 AM Douglas Muldoon of Eco ATM waives in support
11:50:37 AM Senator Richter waives close on bill
11:50:48 AM roll call on SB 948
11:50:57 AM SB 948 reported favorable
11:51:45 AM Senator Soto takes the chair
11:51:59 AM SB 1034 by Senator Simmons
11:52:06 AM Senator Simmons explains the bill
11:52:25 AM Senator Soto ask a question
11:52:41 AM Senator Simmons responds
11:53:12 AM Brian Pitts waives in opposition
11:53:21 AM Senator Simmons closes on the bill
11:53:31 AM roll call on SB 1034
11:53:43 AM SB 1034 reported favorable
11:54:04 AM Senator Simmons takes the chair
11:54:21 AM SB 912 by Senator Flores
11:54:35 AM Tiffany Lorente presents the bill for Senator Flores
11:54:57 AM Amendment 187276 by Senator Negron
11:55:17 AM Ms. Lorente explains the amendment
11:55:36 AM Amendment adopted
11:56:01 AM Back on the bill as adopted
11:56:16 AM Scott Ross, League of Southeastern Credit Unions waives in support
11:56:26 AM Richard Forten, Florida Sheriff's Association waives in support
11:56:39 AM Jonathan Rees, Florida Department of Agriculture and Consumer Service waives in support
11:56:50 AM Brewster Bevis of Associated Industries of Florida waives in support
11:57:02 AM Tim Stanfield, Florida Police Chiefs Assoc. waives in support
11:57:14 AM Samantha Padgett of Florida Petroleum Marketers waives in support
11:57:24 AM Brian Pitts waives in support
11:57:32 AM Ms. Lorente waives close on the bill
11:57:43 AM roll call
11:57:48 AM SB 912 reported favorable
11:58:15 AM SB 1104 by Senator Flores
11:58:31 AM Will McRea explains the bill
11:58:37 AM amendment adopted
11:59:31 AM Mr. McRae closes on the bill
11:59:42 AM roll call
11:59:46 AM SB 1104 reported favorable
12:00:07 PM meeting adjourn



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations, *Chair*
Appropriations Subcommittee on General
Government
Banking and Insurance
Reapportionment
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission,
Alternating Chair

SENATOR TOM LEE
24th District

February 24, 2016

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

2/24/16
O.K.
[Signature]

Dear Chair Simmons,

I respectfully request to be excused from the Senate Committee on Rules meeting on February 24, 2016 due to a previously scheduled meeting.

Thank you for your consideration.

Sincerely,

Tom Lee

Cc: John Phelps, Staff Director

REPLY TO:

- 915 Oakfield Drive, Suite D, Brandon, Florida 33511 (813) 653-7061
- 418 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5024

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore